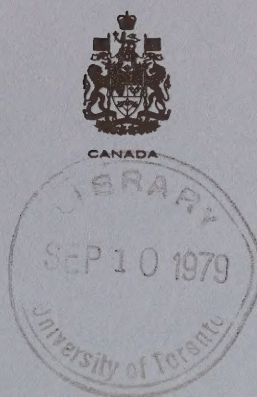


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NATIONAL ENERGY BOARD

REASONS FOR DECISION

In the Matter of Phase I of a Public Hearing
Respecting Tariffs and Tolls to be Charged,
the Financing of the Pipeline, and Other Related Matters
of

FOOTHILLS PIPE LINES (YUKON) LTD.

JULY 1979

REPORT OF THE NATIONAL ENERGY BOARD

IN THE MATTER OF THE NATIONAL ENERGY BOARD ACT and
the Regulations made thereunder, and the Foothills Pipeline
Act, and

IN THE MATTER OF A PUBLIC HEARING AND HEARING
RESPECTING TARIFFS AND TOLLS TO BE CHARGED
FOOTHILLS PIPE LINES (YUKON) LTD. (Yukon Pipeline)
AND FINANCING OF THE PIPELINE, AND OTHER RELATED MATTERS OF
FOOTHILLS PIPE LINES (YUKON) LTD.

3 NATIONAL ENERGY BOARD

17 REASONS FOR DECISION

REPORT OF THE BOARD, DATED ON 17, 18, 19, 20, 21, 22, 23,
AND 24 JUNE 1979.

REPORT

In the Matter of Phase I of a Public Hearing
Respecting Tariffs and Tolls to be Charged,
the Financing of the Pipeline, and Other Related Matters of

FOOTHILLS PIPE LINES

YUKON

LTD.

FOOTHILLS PIPE LINES

YUKON LTD.

FOOTHILLS PIPE LINES

YUKON LTD.

FOOTHILLS PIPE LINES (YUKON) LTD.

Company Limited

FOOTHILLS PIPE LINES

YUKON LTD.

FOOTHILLS PIPE LINES

YUKON LTD.

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FOOTHILLS PIPE LINES

YUKON LTD.

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NATIONAL ENERGY BOARD

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder, and the Northern Pipeline Act; and

IN THE MATTER OF a public hearing respecting tariffs and tolls to be charged by Foothills Pipe Lines (Yukon) Ltd. (hereinafter referred to as Foothills (Yukon), the financing of the pipeline and related matters. File No.: 1510-2-2.

Phase I

Heard at Ottawa, Ontario on 12, 13, 14, 15, 18, 19, 20, 25, and 26 June 1979.

Before:

| | |
|-------------|------------------|
| C.G. Edge | Presiding Member |
| L.M. Thur | Member |
| R.B. Horner | Member |

Appearances:

| | | |
|---------------------|---|-----------------------------------------------|
| R.J. Gibbs, Q.C. |) | Foothills Pipe Lines |
| J.W. Lutes |) | (Yukon) Ltd. |
| John Hopwood, Q.C. | | The Alberta Gas Trunk Line Company Limited |
| E.B. McDougall | | Northwest Alaskan Pipeline Company |
| M.A. Brown | | TransCanada PipeLines Limited |
| Geoffrey King | | Westcoast Transmission Company Limited |
| Hershel Chandler | | ANB Gas Company |
| Pierre Genest, Q.C. |) | Michigan Wisconsin |
| I.A. Blue |) | Pipe Line Company |
| E.B. McDougall | | Northwest Pipeline Corporation |
| D.E. Gibson | | Pacific Gas and Electric Company |
| S. Rickett | | Pacific Interstate Transmission Company |

(ii)

| | | |
|---------------------|---|--------------------------------------------------------------------|
| Hyman Soloway, Q.C. |) | Tennessee Gas Pipeline |
| W.T. Houston |) | Division of Tenneco Inc. |
| H.H. Chandler | | United Gas Pipe Line Company |
| W.S. Chan | | Canadian Superior Oil Ltd. |
| Mr. Phillips |) | Northern Natural Gas Company |
| G.D. Nichols |) | and Consolidated Natural Gas |
| D.B. O'Brien |) | Limited |
| J.H. Snellie | | Dome Petroleum Limited |
| Terry Hughes | | Gulf Canada Resources Inc. |
| C.R. Ayers |) | Hudson's Bay Oil and Gas |
| R.M. Perrin |) | Company Limited |
| R.C. Walker | | Imperial Oil Limited |
| A.S. Hollingworth | | Pan-Alberta Gas Ltd. |
| D.G. Hart | | PanCanadian Petroleum Limited |
| D.G. Hart | | ProGas Limited |
| A.P.G. Walker | | Shell Canada Resources Limited |
| J.H. Farrell | | The Consumers' Gas Company |
| A. Butler | | Union Gas Limited |
| François Bregha |) | Canadian Arctic Resources |
| Gaylord Watkins |) | Committee |
| Laurence McArdle | | Canadian Petroleum Asso- ciation |
| P.C. Labarge |) | Independent Petroleum |
| A.E. Potter |) | Association of Canada |
| R.W. Deutsch |) | The People of the State of |
| J.C. Simpson |) | California and the Public Utilities Commission of California |
| F.H. Lamar, Q.C. |) | Board Counsel |
| J. McL. Hendry |) | |
| Ann Bigué |) | |

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- Appendix B - Proposed Method for Regulating the Tolls
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- 15 April 1979.
- Appendix C - Order No. TG-1-79, with the Board's Method
for Regulating the Tolls and Tariffs of the
Foothills (Yukon) Pipeline, Attached.

ABBREVIATIONS AND DEFINITIONS

AGTL -

The Alberta Gas Trunk Line
Company Limited

Alaskan Northwest Tariff -

Alaskan Northwest Natural Gas
Transportation Company
Proposed FERC Gas Tariff,
Original Volume No. 1,
Docket No. CP78-123

ANG -

Alberta Natural Gas Company
Ltd.

Billing Abatement -

The dollar amount of the credit
relating to the return on
equity and related income taxes
granted to the shipper for
each month in which the trans-
porter fails to accept at least
90 per cent of the volume of
gas nominated by the shipper
for the month.

Board -

The National Energy Board.

Canada-U.S. Agreement -

Agreement between Canada and the
United States of America on
Principles Applicable to a
Northern Natural Gas Pipeline,
dated September 20, 1977.

Company Use Gas -

For any period the total
volume of gas, as determined
by the Company, including but
not limited to gas used as
fuel or for testing, used by
the Company in its gas
transmission operations during
such period.

Designated Officer of
the Northern Pipeline Agency -

The member of the National
Energy Board who is designated
under the Northern Pipeline
Act as Deputy to the Adminis-
trator of the Northern
Pipeline Agency.

Dempster Lateral -

The proposed pipeline to transport Canadian natural gas from the Mackenzie Delta along a route generally parallel to the Dempster Highway, connecting with the Northern Pipeline near Whitehorse, Y.T. The Dempster Lateral comprises zones 10 and 11 of the Foothills (Yukon) pipeline.

Eastern Leg -

At a point just south of Caroline, Alberta, the pipeline will bifurcate. The "eastern leg" will proceed in a southeasterly direction to the Alberta - Saskatchewan border near Empress, Alberta and then to the Canada - United States border near Monchy, Saskatchewan where it will connect with the facilities of Northern Border Pipeline Company.

F.E.R.C. -

The United States Federal Energy Regulatory Commission, formerly the Federal Power Commission.

F.E.R.C. Order No. 31 -

The Federal Energy Regulatory Commission's Order No. 31, "Order Setting Values for Incentive Rate of Return, Establishing Inflation Adjustment and Change in Scope. Procedures, and Determining Applicable Tariff Provisions", Docket No. RM78-12 Issued June 8, 1979.

Foothills (Yukon) -

Foothills Pipe Lines (Yukon) Ltd. is the parent company responsible for the Canadian portion of Alaska Highway Gas Pipeline Project. Foothills (Yukon) is currently sponsored 50 per cent each by AGTL and Westcoast. The ownership of the pipeline is segmented into six federally-incorporated subsidiaries.

- Foothills (South Yukon) - Foothills Pipe Lines (South Yukon) Ltd., owned one hundred (100) per cent by Foothills (Yukon), will own, operate and manage the approximately eight hundred and thirty (830) kilometres of pipeline through the Southern Yukon.
- Foothills (North B.C.) - Foothills Pipe Lines (North B.C.) Ltd. owned fifty-one (51) per cent by Foothills (Yukon) and forty-nine (49) per cent by Westcoast, will own, operate and manage the approximately seven hundred and ten (710) kilometres of pipeline through northern British Columbia.
- Foothills (Alta.) - Foothills Pipe Lines (Alta.) Ltd. owned fifty-one (51) per cent by Foothills (Yukon) and forty-nine (49) per cent by AGTL, will own, operate and manage the approximately thirteen hundred (1300) kilometres through Alberta.
- Foothills (Sask.) - Foothills Pipe Lines (Sask.) Ltd., owned one hundred (100) per cent by Foothills (Yukon), will own, operate and manage the approximately two hundred and sixty (260) kilometres of pipeline in Saskatchewan.
- Foothills (South B.C.) - Foothills Pipe Lines (South B.C.) Ltd., owned fifty-one (51) per cent by Foothills (Yukon) and forty-nine (49) per cent by Alberta Natural Gas Company Ltd., will own, operate and manage the approximately one hundred and seventy (170) kilometres of pipeline through southern British Columbia.

| | |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Foothills (North Yukon) - | Foothills Pipe Lines (North Yukon) Ltd., owned one hundred (100) per cent by Foothills (Yukon), will own, operate and manage the approximately eleven hundred and eighty (1180) kilometres of pipeline through the Yukon and Northwest Territories to connect Delta gas to Whitehorse along the Dempster Highway. |
| Foothills Pipe Lines Ltd. - | A company owned 70 per cent by The Alberta Gas Trunk Line Company Limited and 30 per cent by Westcoast Transmission Company Limited. The company's activities related primarily to the Mackenzie Valley pipeline project. |
| Line Pack Change - | For any period the difference between the total volume of line pack gas contained in a zone of the pipeline of Foothills (Yukon) at the beginning and end of such period, as computed by the subsidiary company. |
| Lost and Otherwise Unaccounted For Gas - | For any zone in any period the difference between the total volume of gas received by a subsidiary company, in such period, in such zone, and the sum for that period of (a) all gas delivered out of such zone, plus (b) Company Use Gas in such zone, plus or minus (c) Line Pack Change in such zone. |
| "Mcf-mile" Method of Allocation - | The shipper's zone Mcf-miles is the product computed by multiplying shipper's Zone Receipt Point volume stated in Mcf (thousand cubic feet) by the distance, in miles, between the shipper's Zone Receipt Point and the Shipper's Delivery Point in the zone. |

| | |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Northern Pipeline Act - | "An Act to establish the Northern Pipeline Agency, to facilitate the planning and construction of a pipeline for the transmission of natural gas from Alaska and Northern Canada and to give effect to an Agreement between Canada and the United States of America on principles applicable to such a pipeline and to amend certain Acts in relation thereto", proclaimed into force on 13 April 1978. |
| Northern Pipeline Hearing - | The hearings held by the National Energy Board during 1976 and 1977 that resulted in a publication of the Board entitled "Reasons for Decision, Northern Pipelines", dated June, 1977, and which led to a certificate of public convenience and necessity, by virtue of the Northern Pipeline Act, to the subsidiaries of Foothills Pipe Lines (Yukon) Ltd. |
| Prebuilt Facilities and Prebuilding - | The facilities of the Foothills (Yukon) pipeline to be built to transmit for export natural gas of Canadian origin before the rest of the pipeline is placed in service for the transmission of Alaska gas. |
| Tracking - | The ability of a shipper on a pipeline to automatically pass through its share of the cost of transmission on the pipeline to its own customers. |
| Transit Pipelines Treaty - | Agreement Between the Government of Canada and the Government of the United States of America concerning Transit Pipelines, dated January 28, 1977, and ratified on October 1, 1977. |
| WCT or Westcoast - | Westcoast Transmission Company Limited |

Western Leg -

At a point just south of Caroline, Alberta, the pipeline will bifurcate. The "western leg" will proceed southward to Coleman on the Alberta - British Columbia border and then in a southwesterly direction to the Canada - United States border near Kingsgate, B.C., where it will connect with the facilities of Pacific Gas Transmission Company.

Zones 1 to 11 -

The zones for the Northern Pipeline and the Dempster Line in Canada, described as follows in the Canada - U.S. Agreement:

Zone 1 Foothills Pipe Lines
(South Yukon) Ltd.

Alaska Boundary to point of interconnection with the Dempster Line at or near Whitehorse.

Zone 2 Foothills Pipe Lines
(South Yukon) Ltd.

Whitehorse to Watson Lake.

Zone 3 Foothills Pipe Lines
(North B.C.) Ltd.

Watson Lake to point of interconnection with Westcoast's main pipeline near Fort Nelson.

Zone 4 Foothills Pipe Lines
(North B.C.) Ltd.

Point of interconnection with Westcoast's main pipeline near Fort Nelson to the Alberta - B.C. border.

Zone 5 Foothills Pipe Lines
(Alta.) Ltd.

Alberta - B.C. border to point of bifurcation near Caroline, Alberta.

Zone 6 Foothills Pipe Lines
(Alta.) Ltd.

Caroline, Alta. to Alberta -
Saskatchewan border near
Empress.

Zone 7 Foothills Pipe Lines
(Alta.) Ltd.

Caroline to Alberta - B.C.
border near Coleman.

Zone 8 Foothills Pipe Lines
(South B.C.) Ltd.

Alberta - B.C. border near
Coleman to B.C. - United States
border near Kingsgate.

Zone 9 Foothills Pipe Lines
(Sask.) Ltd.

Alberta - Saskatchewan border
near Empress to Saskatchewan -
United States border near
Monchy.

Zone 10 Foothills Pipe Lines
(North Yukon) Ltd.

Mackenzie Delta Gas fields in
the Mackenzie Delta, N.W.T. to a
point near the junction of the
Klondike and Dempster Highways
just west of Dawson, Yukon
Territory.

Zone 11 Foothills Pipe Lines
(South Yukon) Ltd.

A point near the junction of the
Klondike and Dempster Highways
near Dawson to the connecting
point with the Pipeline at or
near Whitehorse.

1. INTRODUCTION AND BACKGROUND

1.1 The Company

Foothills Pipe Lines (Yukon) Ltd. ("Foothills (Yukon)") is subject to the jurisdiction of the National Energy Board ("NEB" or the "Board") with respect to matters relating to traffic, tolls, or tariffs. The undertakings of Foothills (Yukon) relate to the pipeline defined in Section 2 of the Northern Pipeline Act as follows:

" . . . the pipeline for the transportation of natural gas from Alaska across Canada along the route set out in Annex I to the agreement . . . "

By section 20 of the Northern Pipeline Act, a certificate of public convenience and necessity was declared to be issued in respect of the pipeline to subsidiaries of the Company, namely Foothills Pipe Lines (South Yukon) Ltd., Foothills Pipe Lines (North B.C.) Ltd., Foothills Pipe Lines (South B.C.) Ltd., Foothills Pipe Lines (Alta.) Ltd., and Foothills Pipe Lines (Sask.) Ltd.. subsection 31(2) of the said Act provides that a single tariff be filed by Foothills Pipe Lines (Yukon) Ltd. in respect of the pipeline in Canada, where, in the opinion of the Board, it is desirable that a single tariff be established and where the Board so orders. It is also provided that, if such course of action is adopted, each subsidiary company is relieved from any obligation to file a tariff.

1.2 Legal Framework

Under Part IV of the National Energy Board Act, the tolls to be charged by Foothills must be just and reasonable.

Although the Act empowers the Board to make orders with respect to all matters relating to traffic, tolls, or tariffs, it does not prescribe or define what constitutes just and reasonable tolls or the method by which the Board is to fix such tolls. However, the Act does provide that, under substantially similar circumstances and conditions, tolls shall be charged equally to all persons at the same rate for traffic of the same description carried over the same route, and that the company shall not make any unjust discrimination in tolls, service, or facilities against any person or locality.

In its deliberations regarding traffic, tolls, and tariffs, the Board is guided by the provisions of Part IV of the National Energy Board Act, some of which have received judicial determination. The Board is also guided by other relevant statute law and common law. The jurisprudence from which the Board draws some guidance includes a substantial body of United States precedents.

Pursuant to Part II of the Northern Pipeline Act, the Board may approve the form and content of a tariff filed at the time the financing of the pipeline is being considered and the rate of return on the equity investment of the company. Moreover, pursuant to condition 12 of Schedule III of the Northern Pipeline Act, the Company has to establish to the satisfaction of the Minister and the Board, before the commencement of construction, that financing has been obtained for the pipeline.

1.3 The Hearing

In October 1978, the National Energy Board issued a "Proposed Approach to Incentive Rate of Return for the Northern Pipeline", received submissions on it, and issued a revised version of the document in January 1979. In March 1979, Foothills (Yukon) filed at the Board's request a draft pro forma Gas Transportation Tariff for the pipeline, accompanied by a submission on the form and content of the tariff. The Company also applied to have certain expenses incurred prior to 1 January 1979 included in its rate base and officially announced its intent to prebuild the southern segments of the pipeline for the movement of Canadian gas.

On 12 April 1979, by Order No. RH-2-79 (Appendix A), the Board ordered that a public hearing be held in Ottawa to hear evidence and submissions on the tariffs and tolls to be charged by Foothills, the financing of the pipeline, and other related matters.

The Board decided to hear evidence and submissions on these matters in four Phases* as follows:

Phase I

- (a) to enable the Board to determine whether the National Energy Board's Proposed Method for the Regulation of Tolls and Tariffs of the Foothills (Yukon) Pipeline, dated 18 April 1979, is an appropriate method for regulating the transportation tolls and charges of Foothills (Yukon); and
- (b) to enable the Board to determine whether the form and content of the Proposed Tariff, filed on 21 March 1979** by Foothills Pipe Lines (Yukon) Ltd., is an appropriate method to use in the determination of just and reasonable transportation tolls for the movement of gas through Zones 1 to 11 of the Canadian Segment of the Alaska Highway Gas Pipeline System;

* Order No. RH-2-79, as amended by Order No. AO-2-RH-2-79 dated 4 July 1979 (Appendix A)

** This tariff was subsequently amended by the Company and was filed with the Board in April of 1979 and was served on the parties named in Order No. AO-1-RH-2-79 (Appendix A).

- (c) to enable the Board, upon reading the application of Foothills (Yukon), dated 12 April 1979, to determine whether certain preliminary expenditures made up to 31 December 1978, as recorded on the books of account of The Alberta Gas Trunk Line Company Limited, Westcoast Transmission Company Limited, Alberta Natural Gas Company Ltd., Foothills Pipe Lines Ltd. and Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies, up to that date, qualify for inclusion in the Rate Base of Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies for the Alaska Highway Gas Pipeline System in Canada;

Phase II -

- (d) to enable the Board to determine whether the form and content of the Proposed Tariff, to be filed by Foothills (Yukon) by 1 May 1979, is an appropriate method to use in the determination of just and reasonable tolls for the movement of Alberta gas through the proposed southern portion (the portion to be prebuilt) of the Alaska Highway Gas Pipeline System.

Phase III -

- (e) to finalize the approach of the Incentive Rate of Return for the Northern Pipeline, such evidence and submissions in this Phase being confined to:
 - (i) modifications that may be needed to the "Proposed Approach to Incentive Rate of Return for the Northern Pipeline", issued by the Board on 24 January 1979, arising from (ii), (iii), and (iv) below;
 - (ii) matters related to the Federal Energy Regulatory Commission's Order No. 31 issued 8 June 1979, and any amendments thereto;
 - (iii) matters referred to in the Reasons for Decision in Phase I and II of these proceedings; and
 - (iv) the effect of any significant change to the financing plan from that placed in evidence during the Board's Northern Pipeline Hearing.

Phase IV -

- (f) to establish to the satisfaction of the Board that financing has been obtained for the pipeline and for any prebuilt sections of the pipeline, pursuant to condition 12 of Schedule III of the Northern Pipeline Act.

1.4 The Application for Phase I

With respect to the matters being dealt with in Phase I of the hearing, Foothills (Yukon) specifically applied to the Board on 30 April 1979 for the following:

(a) an order, pursuant to subsection 31(2) of the Northern Pipeline Act, that a single tariff in the form filed and dated April 1979 be established in Canada with respect to all Canadian segments of the Alaska Highway Gas Pipeline System;

(b) an order approving, pursuant to section 35 of the Northern Pipeline Act, the tariff in the form filed and dated April 1979, including the form of tariff for the subsidiaries of Foothills (Yukon), together with supporting agreements and schedules; and

(c) an order approving for inclusion and amortization in the rate base of Foothills (Yukon) and its subsidiary companies the preliminary expenditures incurred up to 31 December 1978 as recorded on the books of account of the Alberta Gas Trunk Line Company Limited, Westcoast Transmission Company Limited, Alberta Natural Gas Company Ltd., Foothills Pipe Lines Ltd., and Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies (as set forth in the application).

1.5 Rate Regulation of Natural Gas Pipelines in Canada

The rate regulation of natural gas pipelines began earlier in the United States than in Canada. Consequently, when the National Energy Board commenced the formal rate regulation of natural gas pipelines in 1971, it was able to draw upon United States precedents for this purpose. As a result, there are many similarities between Canadian and United States regulatory practices. However, Canadian regulatory practices are governed by specific laws - federally, the National Energy Board Act - and are influenced by precedents arising in provincial and federal jurisdiction. Consequently, a determination of just and reasonable tolls and tariffs in Canada must be viewed in the context of these Canadian laws, precedents, and business conditions in Canada.

A starting point for clarifying the National Energy Board's view on just and reasonable tolls could be the Board's reaction to a statement by the counsel for Foothills (Yukon) in his argument:

"... what is just and reasonable for the company is a rate schedule which produces a revenue stream which compensates the company for out-of-pocket expenses and yields a return which, under the operating circumstances of that company, is a fair return on the invested capital. Rates determined in that fashion, sir, must by definition, in my submission, be just and reasonable to the consumer because they represent the appropriate charge for the service rendered."

The view expressed above does not appear to address the full scope of the meaning of just and reasonable tolls and

tariffs. In a leading Canadian case involving the Board of Public Utilities Commissioners of Alberta, Northwestern Utilities vs. the City of Edmonton et al., [1929]S.C.R. 186, Mr. Justice Lamont stressed the concept of fairness to the consumer on the one hand and to the company and its investors on the other:

"The duty of the Board was to fix fair and reasonable rates; rates which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested. By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability, and certainty equal to that of the company's enterprise..."(at page 192)

Furthermore, the Board does not believe that a toll considered just and reasonable by an investor would necessarily be considered just and reasonable by a customer. The Board concurs with the opinion of the counsel for the Public Utilities Commission of the State of California, who stated that regulators should have consideration for the marketability of gas as well as the stability of the industry. It is the Board's opinion that these broader considerations are important, particularly in regard to a project as vast as the Alaska Highway Gas Pipeline Project and which has far reaching implications for Canadian and United States investors, consumers, and regulatory practices.

Under Canadian Federal law, unjust discrimination in tolls, service, or facilities on a Canadian pipeline under federal jurisdiction is prohibited. Moreover, the Transit Pipelines Treaty, signed by Canada and the United States on 28 January 1977 and ratified on 1 October 1977, contains certain provisions and prohibitions against discrimination on pipelines such as the Alaska Highway gas pipeline.

The above observations are set forth as an introduction to the consideration of the specific matters dealt with in Phase I of this Hearing, which are as follows:

- The National Energy Board's proposed method for the regulation of the tolls and tariffs of the Foothills (Yukon) pipeline;
- The form and content of the tariff for the pipeline as a whole in Canada, excluding provision of prebuilt facilities; and
- The preliminary expenditures incurred up to 31 December 1978 with a view to qualifying them for inclusion in the rate base of Foothills (Yukon) and its subsidiary companies.

2. METHOD FOR REGULATING THE TOLLS AND TARIFFS OF THE
FOOTHILLS (YUKON) PIPELINE

On 18 April 1979, the Board issued a Proposed Method for the Regulation of the Tolls and Tariffs of the Foothills Pipeline; this "Proposed Method" can be found in Appendix B.

Foothills (Yukon) asserted that the method proposed by the Board would impair financing of the pipeline because it would not permit the automatic tracking of the actual costs

incurred by Foothills (Yukon), i.e., a true cost of service tariff. Foothills (Yukon) also asserted that the mechanism contained in the Board's proposal, whereby the Board would require to be satisfied on the justness and reasonableness of certain of the costs, was too cumbersome and time-consuming.

The Board invited Foothills (Yukon) to suggest alternative approaches, bearing in mind that, under the National Energy Board Act, it does not appear that the Board has the power either to set rates retroactively or to order refunds if it were proven that tolls as collected were too high.

Foothills (Yukon) suggested that the reasonableness of the charges could be established through the audit of the cost of service. However, since such an audit would occur after the fact and, therefore, resulting corrections could only be made in the future, this course of action would appear to involve retroactive rate making. Foothills (Yukon) also suggested the use of budgets for control of the tariff by the NEB. However, in its evidence Foothills (Yukon) did not favour the Board's proposal to limit recovery of operation and maintenance costs in excess of the annual budgets as approved by the Board, until such time as the reasons for the overruns could be found to be acceptable by the Board. Another proposal by Foothills (Yukon), that the Board reduce a future rate of return to compensate for an imprudent action in the past, may be retroactive in nature and, if so, would be contrary to existing National Energy Board regulatory practice.

Foothills (Yukon), in evidence, did not suggest any satisfactory alternative to providing the Board with the opportunities to scrutinize virtually all costs in advance of their inclusion in the cost of service toll. Therefore, the key question that remains is how to implement a scheme of regulation in a manner satisfactory to the Board, while, at the same time, minimizing the adverse impact on the private sector financing of the pipeline. Although witnesses for Foothills (Yukon) were uncompromising in their evidence, counsel for Foothills (Yukon), in argument, did suggest certain ways to meet the Board's desire to have control of prospective costs, and most of them have merit.

2.1 Rate Base

The Board indicated that it would conduct progressive audits of construction costs for inclusion in rate base.

Although no specific time was advocated for this, it could well be on an annual basis or at shorter intervals, if appropriate. Although it is also the Board's intention to deal with these costs expeditiously, such costs may require testing through the public hearing process, with the following exceptions.

Under the Northern Pipeline Act, certain contracts for the supply of goods and services covering most major procurement items require the specific approval of the Designated Officer of the Northern Pipeline Agency before they may be awarded. Prior to this approval there must be implementation of the consultative procedures between the governments of Canada and the United States

as provided for in paragraph 8 of the Canada-U.S. Agreement, in order to permit insight of United States authorities into the approval process for contracts for "designated items".

(Reciprocal procedures are to be available to Canada in respect to the pipeline in United States territory.) Costs incurred under contracts approved in this manner, once the administration of the contract has been audited by the National Energy Board to determine that the expenditures were in conformity with the contract, will, with the approval of the Board, be automatically authorized for inclusion in the rate base.

It is probable that, on the initiation of service of the pipeline, all costs may not be known precisely. The Board is willing to include in the initial rate base estimates of costs to complete the pipeline, pending the availability of adequate information on the actual costs incurred, and the determination, through the regulatory process, of their eligibility for inclusion in rate base.

2.2 Cost of Service

The Board is prepared to allow the automatic flow through of actual costs into the cost of service toll in respect of items that have either received the prior approval of the Board, or have been identified by the Board as being virtually outside the control of the company. Such items would include:

- . operation and maintenance costs (up to the annual budget previously approved by the Board);
- . municipal taxes (in the absence of unusual circumstances);
- . depreciation;
- . amortization;
- . income taxes;
- . actual interest expenses in conformity with the tariff;
- . gains and losses on foreign exchange transactions;
- . return on equity; and
- . all charges related to the one-time adjustment to rate base for the Incentive Rate of Return Scheme.

The Board is not prepared to allow the flow through of charges from sponsor companies without prior approval of the method of allocation of such expenses by the Board. Foothills (Yukon) objected to the Board's position, stating it would amount to an interference with the management of the company. However, as such allocations have been tested through the public hearing process in other rate cases heard by the Board, the Foothills (Yukon) position is not acceptable to the Board.

Foothills (Yukon) indicated that there was a need for tracking the cost of company use gas and gas lost or unaccounted for; however, the Board believes that this would arise only if Alberta gas were used as fuel. As the Canada-U.S. Agreement envisaged that shippers would provide their own gas for use as fuel, the Board will deal with the matter of costs of fuel gas when Foothills (Yukon) clarifies its position on this matter.

Point 8 of the Board's "Proposed Method" indicated that the Board would require advance notice of any large unusual costs, with the inclusion of the costs in the toll deferred pending a ruling by the Board on their disposition. However, Foothills (Yukon) indicated that in certain emergencies, e.g., a line break, they would need to act quickly. In such a situation, the Board would permit automatic inclusion of the costs in the cost of service but would require the company to seek a ruling from the Board as to whether revenue derived therefrom may be recorded as revenue or whether they should be deferred pending an investigation by the Board. However, in respect of other major unforeseen items, a ruling from the Board would be required to identify whether such costs could be included automatically in the cost of service toll without being deferred for detailed consideration by the Board. Such rulings would be given expeditiously.

Except for the first year of operation, the Board will require Foothills to defer actual operation and maintenance costs in excess of annual budgets previously approved by the Board.

Such variances will be permitted to include a carrying cost at the prime bank rate plus one per cent. The Board intends to use expedited procedures for the disposition of these items, which may include a public hearing if the Board deems it necessary. Foothills (Yukon), in argument, indicated that such a control is acceptable to it.

Because of the special circumstances that would likely arise in the period of start-up of the pipeline, Foothills (Yukon), in its argument, requested the Board's permission to flow through its actual operation and maintenance costs in the first year of operation without prior approval of the Board. The Board is sympathetic to the Company's request for flexibility and, as a result, will devise special procedures, which it will make known at a time closer to the start of operation of the pipeline, to ensure that the Board has adequate advance knowledge of and can exercise a limited control over such operating and maintenance costs of Foothills (Yukon).

2.3 Other Matters

Because of the announced principle of F.E.R.C. to permit automatic tracking once the specifics of the tariff have been approved, the Board is concerned that shippers on the Foothills (Yukon) pipeline system may not have sufficient incentive to protect the interest of the ultimate consumers of the gas. Therefore, the Board may permit representative consumer-interest groups, upon application, to be

granted interested party status for matters in relation to cost of service, tolls, and tariffs. Foothills (Yukon), in its argument, indicated that the Board's views expressed above would be acceptable to it.

Foothills (Yukon) did not provide extensive comments on point 9 of the Board's proposed scheme of regulation, which reads as follows:

"Because of the essential nature of a cost of service form of tariff, i.e., the recovery of costs as they are incurred, the Board believes that Foothills would have an onus to demonstrate from time to time to shippers, to any other interested parties, and to the Board that it is operating in an efficient and effective way. Although such demonstration would not be an integral part of the tariff, the Board would require Foothills to make such showing."

While it is not necessary for the Board to deal with this matter in this Hearing at this time, nevertheless, the Board reiterates that there will be an onus on Foothills (Yukon) to demonstrate the efficiency and effectiveness of its operations in the circumstances where it is seeking automatic inclusion of its costs in the cost of service tariff. This would include demonstrating that fuel is used efficiently, particularly where it is provided by the shipper and the cost is not included in the toll.

The Board's Decision on the method for regulating the tolls and tariffs of the Foothills (Yukon) pipeline is contained in Appendix C.

3. FORM AND CONTENT OF THE TARIFF

Because of the difficulty of obtaining private sector financing of the Northern Pipeline owing to the complexity of the project and the very large funding required, great weight must be given to the form and content of the tariff. It was for this reason that a cost of service type tariff has been considered essential throughout all of the Northern Pipeline proceedings in both countries. However, this in no way lessens the obligation of the Canadian regulator to make a finding of just and reasonable tolls, based on fairness both to the consumer and to the company and its investor. It is also essential that United States federal and state regulatory commissions provide for tracking of the tolls on the different segments of the pipeline; this was clearly acknowledged in principle on page 67 of F.E.R.C. Order No. 31:

"Tracking of costs by shippers. In order to further assure that revenues are adequate to cover the cost of service of the project, the Commission's policy will be to allow automatic tracking of Alaska gas transportation costs in the tariffs of gas shippers who are interstate pipelines under our jurisdiction. The exact form or nature of the tracking mechanism must await specific applications from shippers to modify or amend their tariffs and may differ from shipper to shipper."

In addition, it has always been recognized that, where appropriate, there should be relative harmony between the Canadian and U.S. tariffs. In fact, consultation between Canadian and U.S. regulatory authorities was specifically provided for in paragraph 9 of the Canada-U.S. Agreement and in Section 32 of the Northern Pipeline Act.

3.1 Major Tariff Items

The major tariff issues in the Hearing centred on four features where the Foothills (Yukon) tariff was different from the provisions contained in F.E.R.C. Order No. 31, which was issued on 8 June 1979. (The United States sponsors have indicated that they will apply for a rehearing relating to the United States Order, but it is not known if these relate to tariff matters).

One feature in Order No. 31 not contained in the Foothills (Yukon) tariff was a provision for an impairment in the return of common equity during the operating phase for any sustained outage of a segment of the pipeline beyond the first 30 days, provided that it was determined that the pipeline company was responsible for the cause of the outage. (The Foothills (Yukon) tariff contains provision for the abatement of the return on common equity only, where service is impaired partially or completely.) Foothills (Yukon), while not welcoming such a clause, did not oppose it. Counsel for the Company did, however, indicate in argument that billings under the tariff and the recognition of the return of common equity as revenue should continue until the cause was ascertained, with any adjustment being made later. In any event, any subsequent adjustment appears to the Board to be retroactive and is, therefore, not acceptable. Accordingly, the Board will require that the return of common equity (i.e., the equivalent amount of depreciation) collected under the cost of service tariff be

deferred as revenue to Foothills (Yukon) on all zones of the line in Canada affected by an outage of more than 30 days (Canada is generally regarded as one segment - but an outage could occur on the western leg but not on the eastern leg or vice versa.) The Board will initiate an enquiry into the cause of the failure to provide service and will subsequently make a ruling with respect to the disposition of the amount contained in the deferred revenue account.

Because of the bifurcation of the pipeline at Caroline, it would appear to the Board that the appropriate way of dealing with an outage of over 30 days is to specify it in terms of the inability to provide any service to a shipper for a period in excess of 30 consecutive days.

The clause to be inserted in the tariff is as follows:

"(1) In the event of a total interruption of service to a shipper for more than thirty consecutive days on the eastern or western segment or on the whole of the pipeline in Canada, Foothills (Yukon) shall continue to collect the cost of service, as calculated under the rate schedules, for every day that the interruption continues, but commencing on the 31st day of such interruption, that component of the cost of service charge in the tariff to that shipper equivalent to the return of equity shall be held in a deferred revenue account.

(2) The disposition of the amount contained in the deferred revenue account referred to in subsection (1) shall be determined by the Board.

(3) Any amount to be amortized as a credit to a shipper in a subsequent period will be increased by the addition of interest as allowed in paragraph 5.53 of the General Terms and Conditions, for an overpayment.

Turning now to the remaining major issues to be resolved, which all relate to the effect on customers of conditions during the start-up period of the pipeline. The three issues are as follows:

1. Start of the Tariff

F.E.R.C. Order No. 31 provides, on page 162, that "the project companies may commence billing after the entire system is completed and tested for service."

(Page 158 describes the system in its entirety to include "... the various segments in the United States and Canada that comprise the system".)

In contrast, the Foothills (Yukon) tariff provides for the tariff to start when all Canadian segments required for the transportation of U.S. gas are "completed and commissioned for service."

2. Minimum Bill

F.E.R.C. Order No. 31 provided for a "minimum bill" for the period after the tariff starts and before gas begins to flow, and for that part of the first year of operation when the revenue from the minimum bill would exceed that derived from the "Interim rate" (discussed below).

On page 159 of the Order it was provided that "The Minimum Bill shall be equal to actual operation and maintenance expenses, current taxes, plus debt service including interest and schedule retirement."

The Foothills (Yukon) tariff contained no such provision.

3. Interim Rate

In the first year of operation, F.E.R.C. Order No. 31 provided for an interim rate (subject to the minimum bill provision) which, however, was to terminate in less than a year "upon attainment of design capacity throughput." The purpose of an interim rate is to avoid the customer paying high unit costs for gas in the initial start-up period when throughputs may be significantly below full contract quantities.

The Order stated that "The level of that interim rate is to be computed on the basis of the projected cost-of-service for the first twelve months of operation divided by the system's design capacity throughput. The interim rate is to be a fixed unit charge (i.e., dollars per dekatherm) and is to be applied to the actual quantities of gas delivered through the system."

The Foothills (Yukon) tariff contained no such clause.

It is understood that in F.E.R.C. Order No. 31 the difference in revenue between that derived from the full cost of service toll and that derived from the minimum bill and/or interim rates would be capitalized and included in rate base.

Start of the Tariff

The position of Foothills (Yukon) on the commencement of the tariff is that, when the pipeline in Canada is ready to provide service, Foothills (Yukon) as a Canadian company should be paid for its services in relation to its ability to ship Alaskan gas through Canada to the United States. In addition, Foothills (Yukon) pointed out that it was experiencing greater financial burdens than earlier predicted because of a delay of at least 22 months beyond the timetable in the Canada-U.S. Agreement. This was caused by the time taken for the passage of the National Energy Act by Congress and by procedural difficulties in the United States with respect to regulatory and other actions required for construction of the pipeline.

With respect to the commencement of the tariff, the Board notes, first, that the Canada-U.S. Agreement was silent on this point, presumably because it was not negotiated at that time, and second, that the U.S. Presidential Decision* made after the conclusion of the Canada-U.S. Agreement precludes the tracking of the tariff to consumers until the whole system is ready for operation:

"3. Neither the successful applicant nor any purchaser of Alaska gas for transportation through the system of the successful applicant shall be allowed to make use of any tariff by which or any other agreement by which the purchaser or ultimate consumer of Prudhoe Bay natural gas is compelled to pay a fee, surcharge, or other payment in relation to the Alaska natural gas transportation system at any time prior to completion and commissioning of operation of the system."

* Decision and Report to Congress on the Alaska Natural Gas Transportation System, Executive Office of the President, Energy Policy and Planning. September 1977 (pages 37, 38)

That Decision governs the tariff of the pipeline companies on the United States segment of the line and the tracking of costs related to those tariffs as well as the tracking of the costs related to Canadian tariff to U.S. consumers. It does not govern the payment of charges under the Foothills (Yukon) tariff by United States shippers for the Canadian portion of the pipeline, which is under the jurisdiction of the National Energy Board. Whether the United States shippers would sign transportation contracts with Foothills (Yukon) in the absence of automatic tracking is another matter. Shippers were silent on this point in the Hearing. The amendment to the National Energy Board Act contained in Section 41 of the Northern Pipeline Act specifically provided that "the Board may establish the day on which the tariff is to come into effect and the company shall not commence to charge such toll before that day." It could, therefore, permit the tariff to start when the pipeline was ready to provide service, if the Board so ordered.

Foothills (Yukon), in the evidentiary part of the proceedings, admitted that it was probably impractical to expect, on such a vast project, that all segments of the pipeline in Alaska, in Canada, and in the lower 48 states, would come into operation on the same day. They conceded that a one-month delay in the start of the tariff in such circumstances would not impair the financeability of the pipeline, but did not favour the acceptance of a delay of two months. Taking all

these factors into account, and recognizing that the carrying charges on debt and equity in Foothills (Yukon) and its subsidiaries will be capitalized until the tariff starts, the Board concludes that the tariff should commence either when gas begins to flow or 60 days after the Board has granted "Leave to Open" for all segments of the pipeline in Canada, whichever is earlier.

Minimum Bill and Interim Rate

In its opposition to the minimum bill and the interim rate, Foothills (Yukon) asserted that it should be paid in full for the services that it was ready to supply, including a return on the equity invested. It pointed out that its equity shareholders were at a considerable immediate disadvantage compared with the U.S. equity shareholders on the U.S. segments of the pipeline. This is so because American tax laws permit the deduction of the interest expense in the pipeline company from the sponsor's own taxable income, a deduction not permitted under Canadian law. Second, Foothills (Yukon) noted that the United States had an investment tax credit whereby the sponsors could claim 10 per cent of the outlay on the Alaska Highway pipeline as a deduction from the income taxes payable by the sponsor company. This gives rise to the situation in the United States where a "minimum bill" designed to service the debt in the pipeline company would in all probability also provide indirectly for the servicing for the debt of the sponsor company investing in the equity in the Alaska Highway pipeline. In Canada, the minimum bill would result in only the debt of Foothills (Yukon) being serviced.

Foothills (Yukon) and its financial advisors stated that the payment of cash dividends by Foothills (Yukon) after the tariff started and before gas began to flow, as well as in the first year of operation, would be essential to maintain the financial integrity of the sponsors. Therefore, cash generated under an interim rate or a minimum bill, as set forth in F.E.R.C. Order No. 31, which did not provide for the full recovery of the return on common equity in the toll, would be inadequate for this purpose.

In general, the Board recognizes that the tax laws of the United States when applied to this pipeline, provide more favourable treatment to equity investors in that country than that available under Canadian tax laws. However, it would appear that a more important consideration for Canadian regulatory authorities is whether investors in this pipeline in Canada are treated fairly compared with investors in other Canadian pipelines after giving recognition to the circumstances of this pipeline.

With respect to the minimum bill and the interim rate, the Board does not accept the position of Foothills (Yukon) on these matters, as it does not appear to give sufficient weight to the reasonableness of the tariff from the viewpoint of the shippers and consumers in the period of the initial operation of the pipeline. The Board points out that Foothills (Yukon) will be earning its full return on equity during the whole of this period. These earnings will be reported in the published

financial statements of the Company. Granted, the realization of these earnings, through amortization, would be deferred until later, and, therefore, would not be available for distribution as dividends when these earnings are capitalized on the books of account. Major industrial enterprises rarely generate normal profits in their first year of start-up. In addition, it appears unreasonable to the Board that Foothills (Yukon) in this period should expect to declare cash dividends primarily for the purpose of servicing the debt of sponsor companies used to finance the sponsor's investment in the common equity of Foothills (Yukon) and its subsidiaries. Rather it seems to the Board that the sponsor companies should look to their own internally-generated cash resources for this debt service in the initial period, if full contract volumes cannot immediately be transmitted. Furthermore, the example of the "minimum bill" given by Foothills (Yukon) during the Hearing would have generated revenues equivalent to 80 per cent of revenue if the pipeline were operating at full contract quantities. This was because the example provided for a large debt repayment in the first year of operation. The Board believes that a repayment of such size may not be appropriate and that it should be possible, through the ingenuity of investment bankers, to avoid heavy debt repayment in the start-up period.

The Board notes that it is not unusual for debt indentures to provide for the restrictions of dividends in the early phase of a business' operation. The Board also notes that no financing plan is currently before the Board to test the assertion of Foothills (Yukon) that private sector financing would be impossible if provisions were included in the tariff for a minimum bill or interim rate. A fortiori, neither the witnesses of the sponsor companies nor the investment bankers provided any quantitative evidence on the ability of the sponsor companies to use their own cash resources to service their own debt used for the investment in the equity of Foothills (Yukon) in the critical start-up period of the pipeline.

For the above reasons, the Board does not accept the assertion of Foothills (Yukon), on the basis of evidence adduced in these proceedings, that private sector financing of the pipeline would not be possible if the minimum bill and interim rates were included in the tariff. Moreover, the concerns expressed by the Company's investment advisors with respect to interest coverage have to be viewed in relation to the relatively small equity component (25%) of the capital structure proposed by the same investment bankers at the time of the Board's Northern Pipeline Hearing.

The Board recognizes that from a shipper and customer viewpoint some flexibility in the tariff is needed in the start-up period of such a major project, with large volumes of gas to be moved through the pipeline and absorbed in the market

place. The Board also notes that F.E.R.C., in its Order No. 31, has provided for the foregoing features and, presumably, may well expect similar provisions to be present in the Canadian tariff if it is to be acceptable for tracking in the United States.

The Board, in making its findings in this Decision, is making them on the assumption that F.E.R.C. Order No. 31 will be finalized as issued on June 8, 1979. (The Board notes that there has been an application for rehearing in relation to the F.E.R.C. Order). Should significant changes to the Order occur as a result of the rehearing process, the Board will review its present decision in the light of the F.E.R.C. findings.

The Board's requirements in relation to the three major tariff items are, therefore, as follows:

1. The tariff shall commence when gas begins to flow or 60 days after the Leave to Open Order has been granted by the Board for the whole of the pipeline in Canada, whichever is earlier;
2. A minimum bill on a basis similar to that included in FERC Order No. 31 shall apply throughout the twelve month period from the start of the tariff unless the revenues generated from the interim rate or the full cost of service, if applicable, will be higher;
3. The Board will require an interim rate on a basis similar to that contained in F.E.R.C. Order No. 31 in the twelve-month period from the date of commencement of the tariff in

Canada so long as the interim rate generates more revenue than the minimum bill, and the quantity of gas being shipped is less than the design capacity throughputs as determined by the Board.

4. The Board will require that, during the period from when a leave to open order applies to the whole of the pipeline in Canada until a full cost of service tariff comes into effect, the portion of the full costs of service that will exceed revenues, as provided for in 1, 2, and 3 above, be capitalized and included in rate base. The foregoing is subject to the practice that no normalized income tax is to be provided in relation to return on equity that is to be capitalized as a result of this requirement.

3.2 Other Tariff Issues

In the evidentiary part of the hearing, Foothills (Yukon) identified three levels of agreements that would be required in conjunction with the transportation of gas through the Canadian segment of the Alaska Natural Gas Transportation System. (Unsigned copies of these agreements were placed in evidence at the hearing.) The first is a tariff-service agreement including rate schedules between Foothills (Yukon) and the Alaska gas shippers. The second is a similar set of documents between Foothills (Yukon) and its subsidiaries for the various segments of the pipeline. The third is an operating

agreement between each subsidiary and the company that will operate the facilities in each particular zone. For example, Foothills (Alta.), the subsidiary company, would contract with The Alberta Gas Trunk Line Company Limited to operate the zones of the Canadian portion of the system within Alberta.

Foothills (Yukon) advised the Board that execution of these agreements is not expected to occur until the shippers of Alaska gas have definitive contracts to purchase gas and until the Board has approved the Company's tariff, including the three levels of agreements. However, Foothills (Yukon) did undertake to notify the Board, prior to execution, of changes to be made in any of the agreements.

The Board's decision in respect of all these tariff issues will require Foothills (Yukon) to revise its tariff. In addition, Foothills (Yukon) may be required to make minor changes to these agreements after the prospective Alaska gas shippers have made a detailed review of the Foothills (Yukon) tariff. A witness for these shippers identified a number of provisions in the tariff that the shippers might require Foothills (Yukon) to modify. The witness characterized most of these suggestions made by the shippers as "fine tuning" the tariff.

Changes or observations the Board wishes to make with respect to other tariff items are as follows:

3.2.1. Billing Procedure

The proposed six-month billing procedure of Foothills (Yukon) is similar to that contained in the Alaska Northwest tariff with one exception, "the proposed method of collecting charges from each shipper". Foothills (Yukon) proposes to estimate the cost of service for each zone month by month for each of the six months in the billing period. This monthly estimate is then allocated to each shipper utilizing each zone on the basis of his zone allocable share. As such, the estimate of the shipper's monthly charge is unlikely to be the same for each month in the billing period.

Under the Alaskan Northwest tariff, the charges attributable to each shipper for each month during the relevant six-month period would be totalled and averaged for collection in six equal monthly installments during that period. The witness for the prospective Alaska gas shippers stated that the shippers would prefer the provision contained in the Alaskan Northwest tariff in respect of the monthly charge to be billed to each shipper during the six-month billing period.

The Board believes that should the Alaska gas shippers request such a modification, Foothills (Yukon) should provide it.

The proposal of Foothills (Yukon) to include in the working capital allowance component of the zone rate base the variance between the actual cost of service for each zone and the total charges collected from all shippers utilizing each such zone during the six-month period is not approved. Rather, the Board will allow Foothills (Yukon) to accrue an interest carrying charge of prime bank rate plus one per cent on the variance. The carrying charges along with the variance would subsequently be amortized over the next six-month period.

3.2.2. Tender Deficiency Clause

Rate Schedule OT-1 of the Alaskan Northwest tariff provides that "if a shipper on any day in any billing month does not tender all or a portion (Tender Deficiency) of such Shipper's Daily Receipt Quantity, then no payment shall be due to Company under this Rate Schedule in respect of gas received by Company pursuant to Article 2 of Shipper's Service Agreement and which is governed by this Rate Schedule, on any other day during such billing month and the immediately following billing month, up to the undischarged amount of such Tender Deficiency".

The Foothills (Yukon) tariff contains no such clause. However, the witness for the prospective shippers of Alaska gas expressed the view that the shippers would prefer that such a provision be included in the Foothills (Yukon) tariff.

The Board's position with respect to this clause is that Foothills (Yukon) should include such a provision in its tariff, if shippers so request.

3.2.3. Make-up Gas Transportation Payment

The Foothills (Yukon) tariff provides for reductions in the charge to a shipper if Foothills (Yukon) fails to take receipt of gas tendered by the shipper. The basic credit, or Billing Abatement, for affected shippers would be applied to that portion of the Monthly Charge that is composed of the return on common equity and the income taxes related to such return. The percentage by which the total return on equity and related income taxes will generally be reduced is determined by dividing (i) the volume of gas (total of the daily receipt deficiencies) which Foothills (Yukon) fails to accept during the month by (ii) the total volume of gas nominated by shipper during the month pursuant to its Service Agreement. Such a Billing Abatement would apply to any month in which the level of non receipt exceeds 10 per cent. If Foothills (Yukon), for example, fails to accept 50 per cent of the shipper's monthly contract gas nominations, the Billing Abatement for that month would consist of half of the return on common equity and related income taxes.

Foothills (Yukon) will offer make-up gas transportation service in respect of any gas previously nominated by the shipper that the Company was unable to accept. The tariff provides a formula for determining a shipper's make-up gas transportation payment for any billing month in which the company receives make-up gas tendered by the shipper.

This formula is as follows:

$$\text{MUGTP} = \text{SBA} \times \text{MUG} / \text{SRD}$$

where:

MUGTP is the Shipper's Make-Up Gas Transportation Payment in dollars for such billing month.

SBA is the sum of Shipper's Billing Abatement, expressed in dollars, for all prior billing months less the sum of Shipper's Make-Up Gas Transportation Payment for all prior billing months.

SRD is the sum of Shipper's undischarged receipt deficiencies⁽¹⁾, expressed as volume, as at the beginning of such billing month.

MUG is the quantity of Make-Up Gas received by Company from Shipper in such billing month.

The undischarged receipt deficiencies identified in the SRD component include both receipt deficiencies for which the shipper received no billing abatement and receipt deficiencies for which the shipper did in fact receive a billing abatement. As noted, the shipper does not receive any reduction (Billing Abatement) in his share of the cost of service of Foothills (Yukon) for any month in which Foothills (Yukon) transports at least 90 per cent of the volume of gas nominated by the shipper.

(1) A receipt deficiency occurs on any day in any month in which the Company is unable to receive from Shipper any portion of the gas nominated by Shipper to Company pursuant to Article 1.1 of the Service Agreement. Receipt deficiencies not discharged in the month in which they occur may only be discharged as make-up gas in any subsequent billing month.

The witness for the Alaska gas shippers expressed the view that the shippers would prefer the provision contained in the Alaskan Northwest tariff in respect of payment for Make-Up Gas. This provision requires that "No Billing Abatement Gas" tendered by the shipper to Company as Make-Up Gas in any subsequent billing month would not be subject to any payment. In addition, this provision provides that regardless of the order in which these receipt deficiencies occur, "No Billing Abatement Gas" will be deemed to have been received by Company from shippers before other Make-Up Gas, and "No Billing Abatement Gas" relating to an earlier billing month will be deemed to be received by Company before "No Billing Abatement Gas" relating to a later billing month.

The Board will allow Foothills (Yukon) to use its proposed formula for determining a shipper's Make-Up Gas Transportation Payment in respect of the transportation of MakeUp Gas for which the shipper received a Billing Abatement. However, the Board will require that "No Billing Abatement Gas" tendered by the shipper to Foothills (Yukon) be transported free of charge and that the Company must discharge all the shipper's outstanding receipt deficiencies relating to "No Billing Abatement Gas" before the Company may transport Make-Up Gas volumes tendered by a shipper relating to "Billing Abatement Gas."

This should provide an incentive to Foothills (Yukon) to perform make-up activities as quickly as possible since to delay the transportation of make-up gas would delay the Company's recovery of the abatement of return on equity.

3.2.4. Service Agreement, Article 3, Term of Agreement

Article 3 of the Service Agreement of the Foothills (Yukon) tariff states that the "Service Agreement shall become effective on the Shipper's Billing Commencement Date and shall continue in effect for a period of (25) years thereafter, and thence from year to year until terminated by either shipper or Company by not less than (12) months prior written notice to the other".

The witness for the Alaska gas shippers stated that there was concern expressed by one shipper that the Service Agreement could be terminated unilaterally upon 12 months notice. That shipper would prefer that the provision reflect termination by mutual agreement.

It would be premature for the Board without the views of the other prospective shippers to resolve this issue at this time.

3.2.5. Allocation of Zone Cost of Service and Allocation of Company Use Gas

Foothills (Yukon) proposed to allocate the zone cost of service among the shippers utilizing such zone based on the "Mcf-mile" method of allocation.

The witness for the prospective Alaska gas shippers expressed the view that this proposed method of cost allocation might be inconsistent with the volumetric method of Cost Allocation described in the Canada-U.S. Agreement.

Foothills (Yukon) advocated this method of cost allocation to accommodate the situation, in respect of the prebuilt facilities and tariff, when Alberta gas would still be flowing at the same time as Alaska gas. It could also apply to the circumstance where Alaska gas is supplied to communities in the Yukon and other northern communities and replaced further south with Alberta gas.

The Board would express the same views with respect to Company Use Gas, and Lost and Otherwise Unaccounted for Gas. In the absence of prebuilding to move Alberta gas and in the absence of drop-offs to northern communities, the Company's proposed Mcf-Mile method of allocating Company Use Gas, and Lost and Otherwise Unaccounted for Gas in a zone to each shipper would produce identical allocations to each shipper when compared to the volumetric method described in the Canada-U.S. Agreement.

The Board will require Foothills (Yukon) to make appropriate tariff provisions with respect to gas dropped-off to northern communities. The question of an Mcf-mile allocation in relation to Alberta gas will be dealt with in Phase II.

3.2.6. Determination and Allocation of Charges to each zone under the Three Levels of Agreements

Foothills (Yukon) identified a number of allocation schemes to be used in determining and/or allocating the following charges to each zone.

- (a) the determination of the Administration Charge of Foothills (Yukon) including the return on preliminary expenditures capitalized and the allocation of such charges to each zone;
- (b) the allocation of each subsidiary Company's overhead charges, where applicable, to each zone; and
- (c) the methods of allocating the Recoverable Costs identified in the Operating Agreements between the Operator and each Foothills (Yukon) subsidiary and the allocation of these recoverable costs, where applicable, to each subsidiary company's zones.

These methods of allocation were examined during the Hearing. The Company acknowledged, during cross examination, that changes may be required in respect of the language contained in the Operating Agreement. The Board finds these proposed methods of allocation generally acceptable. However, the Board will require the allocation schemes to be reviewed in detail before charges are flowed automatically into the cost of service tariff. This requirement is set forth in Clause 12 of "The National Energy Board's Method for Regulating the Tolls and Tariffs of the Foothills (Yukon) Pipeline" (Appendix C).

Allocation of Charges Arising From the Preliminary Expenditures

In respect of the preliminary expenditures that are discussed under Section 5 of the Board's Reasons for Decision, Foothills (Yukon) indicated that these expenditures would be included directly in its rate base and not reallocated to its subsidiaries. Foothills (Yukon) intended to allocate the cost of service charges i.e., return*, income taxes, and depreciation, that are related to rate base items to zones on the basis of the number of zones completed and commissioned for operations.

The Board believes that it would be unfair to charge any of the costs related to preliminary expenditures for northern pipeline before Alaska gas begins to flow and therefore, directs that the tariff be amended accordingly.

In addition, the Board believes that the allocation of the cost of service charges relating to these preliminary expenditures to each zone would be fairer if made on the basis of the "filed capital costs" contained in the Canada-U.S. Agreement. One refinement will, however, be needed. Cost of service charges related to the preliminary expenditures of \$2.2 million in relation to the Dempster

* As Foothills (Yukon) indicated its intent to finance the preliminary expenses with an issue of preferred shares, the rate of return applicable to these expenses would appear to be the cost of the preferred shares.

lateral (zones 10* and 11), should not be allocated to the main pipeline at this time, pending disposition of the application to build the Dempster Lateral. The remaining cost of service charges associated with the preliminary expenditures should be allocated to Zones 1 through 9 on the basis of the "filed capital costs" in each zone.

3.2.7. Reduction in Zone Allocable Share

At the conclusion of Phase 1 of the Hearing, Foothills (Yukon) had not had sufficient time to redraft Section 16 of the General Terms and Conditions entitled "Reduction in Zone Allocable Share". Therefore, this item will be dealt with later by the Board.

3.2.8. Accounting and Tariff Treatment of the Adjustment for Incentive Rate of Return

Although the approach to the Incentive Rate of Return for the Northern Pipeline will not be finalized until Phase III of this hearing, the accounting and tariff treatment of the one time adjustment to rate base that will flow therefrom, i.e. the IROR Adjustment, has already come up for consideration.

In the tariff as filed, Foothills (Yukon) provided, under paragraph 8.82 of the Foothills (Alta.) tariff, for

* The Canada-U.S. Agreement does not provide for "filed capital costs" with respect to Zone 10.

the inclusion of the IROR Adjustment as a component of the zone rate base of the subsidiary, Foothills (Alta.). In order to clarify the complete tariff treatment of this item, it is necessary first to identify the accounting procedure to be followed in recording this one time adjustment to rate base in the books of account of the Foothills (Yukon) subsidiaries.

Accordingly, the Board will require that the IROR Adjustment, and any offsetting credit or debit, be recorded on the books of account of the subsidiaries of Foothills (Yukon), using for this purpose specific subdivisions of Accounts 179, Other Deferred Debts, and 279, Other Deferred Credits, as specified in the Board's Gas Pipe Line Uniform Accounting Regulations. While the amortization of the IROR Adjustment will be included as a revenue requirement of the cost of service under the tariff, the reduction of the balance in these two accounts will be recorded through a corresponding credit and debit to each account equal to the recovery through the cost of service.

It should be noted that F.E.R.C., in its Order No. 31, advocated the use of memorandum records only to account for the IROR Adjustment, a method supported by Foothills (Yukon). Such an accounting treatment is not compatible with the Board's Gas Pipe Line Uniform Accounting Regulations, and is not, therefore, acceptable.

For tariff purposes, revenue requirements will include, in addition to Amortization Expense, as described in subparagraph 8.5 of the Rate Schedule of the Foothills (Alta.) tariff, provision for the recovery of the IROR Adjustment over the project's life as approved by the National Energy Board. The outstanding balance of the IROR Adjustment will be included as a component of rate base; also the offsetting balance, whether it be debit or credit, will be included in capital structure as part of the equity component.

3.2.9. Cash Working Capital

Cash working capital requirements (item (iv) under subparagraph 8.82 of the Rate Schedule of Foothills (Alta.)), are given as "150 percent of the gas operating expenses described in subsection 8.3". The Board finds this provision acceptable at this time with the understanding that this provision may require substantiation at a later date through the preparation of a cash lag study.

3.3 Tariffs General

The views of shippers were not adequately represented at the Hearing. This is partly because all of the Prudhoe Bay gas is not yet under contract, but also because F.E.R.C. has yet to deal with the mechanisms for the tracking of the tariff. It is, therefore, anticipated that minor adjustments in the tariff may be needed when contracts between producers and shippers and service agreements for the transportation of gas between Foothills (Yukon) and the shippers have been further negotiated and executed.

The present Hearing has also not dealt with issues relating to the composition of the natural gas. Once F.E.R.C. proceedings have resolved matters concerning carbon dioxide content and other gas conditioning matters, the tariff implications of the gas composition in the Canadian tariff can also be resolved.

More importantly, the present Hearing did not consider the tariffs related to prebuilt facilities; this will be the subject of Phase II of this Hearing commencing on 31 July 1979. Consequently, no consideration could be given to the adjustments in the mainline tariff that may well become necessary as a result of the decision on prebuilt facilities.

On the major tariff items, the Board is prepared to vary its decision in the light of any changes to F.E.R.C. Order No. 31, that in the opinion of the Board are significant. If and when definitive financing negotiations are taking place, some further modifications in the form and content might then be necessary.

As an interim measure, the Board is requiring Foothills (Yukon) to re-file its tariff on the basis of these Reasons for Decision at a date to be specified by the Board.

4. PRELIMINARY EXPENDITURES

Foothills (Yukon) applied to include in its rate base pre-construction expenses incurred on northern pipeline projects up to December 31, 1978.

These expenditures included:

| | <u>Foothills (Yukon) \$000</u> | <u>AGTL \$000</u> | <u>WCT \$000</u> | <u>ANG \$000</u> | <u>Totals \$000</u> |
|---------------------------------------------------------------------------------------------------------|----------------------------------------|-----------------------|----------------------|----------------------|-------------------------|
| . Expenses incurred by sponsor companies and Foothills Pipe Lines Ltd. on Northern Natural Gas projects | - | 19,880* | 4,633* | 2,054 | 26,567 |
| . Direct expenses of Foothills (Yukon) | 39,517 | - | - | - | 39,517 |
| . Allowance for Funds Used (Carrying costs of the expenditures) | - | 8,338 | 2,289 | 666 | 11,293 |
| Charges from the Northern Pipeline Agency and the NEB under Section 46 of the NEB Act | <u>1,734</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>1,734</u> |
| Total | <u>41,251</u> | <u>28,218</u> | <u>6,922</u> | <u>2,720</u> | <u>79,111</u> |

Only Foothills (Yukon) led evidence in this part of the proceeding; no intervenors opposed the Foothills (Yukon) application.

* includes Foothills Pipe Lines Limited expenses of \$13,169,000
namely AGTL \$10,096,000
WCT \$ 3,073,000

4.1 Expenses of Sponsor Companies

Foothills (Yukon) argued that although the earlier expenses incurred by the sponsor companies, including those on the Maple Leaf Project, were incurred before the Foothills (Yukon) project came into existence, they were, in fact, valuable to Foothills (Yukon), and that the equivalent expenditures in dollars would have had to have been incurred by Foothills (Yukon) had the earlier expenditures not been made. Cross-examination revealed that although some aspects of the expenditures were site-specific, the knowledge and experience gained considerably reduced the expenses that would otherwise have been incurred by Foothills (Yukon).

The Board finds that the expenses of \$26,567,000 incurred by the sponsor companies are eligible to be included in the rate base of Foothills (Yukon) and its subsidiaries. However, the Board is not prepared to authorize their inclusion until such time as the expenses are actually transferred to the books of account of Foothills (Yukon) and its subsidiaries; Foothills (Yukon) is hereby required to notify the Board when the transfer is made.

The Board notes an undertaking of Alberta Natural Gas Company Ltd. to notify the Board if the expenses authorized for inclusion in rate base in these proceedings are subsequently also authorized in the rate base of any U.S. pipeline company.

This undertaking was broadened by Foothills (Yukon) to include any part of the \$79.1 million and to include any jurisdiction in Canada and in the United States.

4.2 Foothills (Yukon) Direct Expenses

The application to include \$39,517,000 of preconstruction expenses incurred by Foothills (Yukon) and its subsidiaries in the rate base was not challenged. The Board, therefore, authorizes the expense to be included in the rate base subject to the following exception.

There is provision for \$3,005,000 for a bonus payable to staff when the project receives "final approval to proceed". The Board recognizes the bonus expenses as being eligible for inclusion in the rate base, but is not prepared to authorize this until such time as they are paid.

4.3 Allowance For Funds Used To Finance Preliminary Expenditures

The sponsor companies claimed the following amounts as an allowance for funds used to finance preliminary expenditures.

| | |
|-------------------------------|---------------|
| | \$000 |
| Alberta Gas Trunk Line (AGTL) | 8,338 |
| Westcoast Transmission (WCT) | 2,289 |
| Alberta Natural Gas (ANG) | <u>666</u> |
| Total | <u>11,293</u> |

Board practice under its accounting regulations, does not specifically permit Allowance for Funds Used During Construction (AFUDC), or Interest During Construction (IDC), to be included in the rate base prior to the date on which the project is certificated. With respect to the Foothills (Yukon) pipeline, this would be the date the Northern Pipeline Act was proclaimed into force, namely, 13 April 1978. The sponsor companies have included an equity component in the capitalization rate sought. This is permitted under the Board's accounting regulations and, therefore, the rates applied for are approved from 13 April 1978 onwards.

For the period prior to 13 April 1978, the Board believes it to be a sound economic principle that investors be compensated for the use of funds spent on the project. The Board has compared the rates proposed by the sponsors with the prime bank rate. Since the differences are small the Board accepts the rates proposed by the sponsors. The Board concurs with the Applicant that no "allowance for funds used" should be permitted on the accrued employee bonuses, i.e. \$3,005,000, until such time as they are paid. The Board, therefore, approves an amount of allowance for funds used to finance preliminary expenditures of \$11,293,000, as claimed, and authorizes its inclusion in rate base when the amounts for each sponsor company have been transferred on the books of Foothills (Yukon).

4.4 Northern Pipeline Agency and National Energy Board Charges

Pursuant to Section 46.1 of the National Energy Board Act, charges to Foothills (Yukon) in 1978 from the Northern Pipeline Agency and the National Energy Board amounted to:

| | |
|--------------------------|--------------|
| | \$000 |
| Northern Pipeline Agency | 1,698 |
| National Energy Board | <u>36</u> |
| Total | <u>1,734</u> |

These charges are subject to audit by the Auditor General of Canada. The audit is now in progress and once the Auditor General has certified that the expenses giving rise to those charges were incurred for the purposes stated in the Act, Foothills (Yukon) is authorized to include them in its rate base.

4.5 Tax Treatment of Preliminary Expenses

One subject examined at length was the proposed tax treatment by the sponsor companies of their expenses incurred in respect to the Foothills (Yukon) project. The sponsors indicated that they were seeking a tax ruling from Revenue Canada, Taxation, on the deductibility of these expenses against the taxable income of the sponsor companies. If allowed, the expenses, when transferred to Foothills (Yukon), would not then be deductible against the taxable income of Foothills (Yukon) or its subsidiaries. Foothills (Yukon) indicated that after the tax ruling has been received and before construction has begun,

the expenses would be transferred to Foothills (Yukon) at the values shown in the Reasons for Decision: namely, the original dollar outlay by the sponsors adjusted for any "Allowance for funds used". The sponsors would receive preferred shares of Foothills (Yukon) of a dollar value equal to the preconstruction expenses.

The sponsors agreed that there were two features to the proposed tax treatment, namely:

1. the value of the write-off of the expenses by the sponsor earlier than would otherwise occur if the expenses were deductible by Foothills (Yukon);
2. an absolute reduction in the total taxes to be paid by the sponsors and an absolute increase in those to be paid by Foothills (Yukon) and its subsidiaries over the life of the pipeline.

The latter aspect would cause the cost of service tolls of Foothills to its shippers to be higher than if the expenses were to be deductible for tax purposes by Foothills (Yukon).

The Board is unaware of any regulatory precedent where a sponsor company in seeking a tax advantage for its own company, has imposed an additional charge to be included in the tolls paid by the shipper and the customer on the pipeline in which the sponsor is an investor.

Accordingly, the Board finds that it is just and reasonable that the tolls of Foothills (Yukon) should be no higher than they would have been had preconstruction expenses, approved by the Board, been eligible for deduction for tax purposes against the income tax of Foothills (Yukon).

Accordingly, the Board will require that normalized taxes included in the cost of service of Foothills (Yukon) will be computed on the basis that Foothills (Yukon) could deduct the expenses for tax purposes. Consequently, there will be no penalty on the shippers and, at the same time, the sponsor companies will still have the time value of the earlier write-off for tax purposes on their own books of account compared with when it will occur on the Foothills (Yukon) books of account.

4.6 Rate Base of Foothills (Yukon) in the Context of the Incentive Scheme

Foothills (Yukon) proposed that preliminary expenses be included in its own rate base. This proposal has implications in relation to the Incentive Rate of Return Scheme.

The Incentive Scheme, to be considered during Phase III of this hearing, contains the proposal to establish a cost performance ratio for each zone of the pipeline in Canada through a zone-by-zone comparison between the actual cost of construction and the filed capital cost as contained in the Canada-U.S. Agreement. The cost of construction for each zone will be recorded in the books of account of the Foothills (Yukon) subsidiary companies. In order to ensure that costs recorded on the books of the parent company, Foothills (Yukon),

are not excluded from the cost performance measurement process, the Board proposes that, for the purposes of the Incentive Scheme, costs approved by the Board for inclusion in the rate base of Foothills (Yukon) will be allocated to each zone on the basis of the filed capital cost contained in the Canada-U.S. Agreement.

5. DISPOSITION

The Board finds it desirable that a single tariff be established in Canada in respect of all Canadian segments of the Alaska Highway Gas Pipeline System. Pursuant to subsection 31(2) of the Northern Pipeline Act, the Board requires Foothills (Yukon) by virtue of paragraph 2 of Order No. TG-1-79, which appears as Appendix C of this report, to file such a tariff at a date to be specified by the Board, in the form filed and dated April 1979, as amended by or qualified in these Reasons for Decision.

The Board approves, pursuant to section 35 of the Northern Pipeline Act, the form and content of the Foothills (Yukon) tariff in the form filed and dated April 1979, including the form and content of the tariff for the subsidiaries of Foothills (Yukon), together with supporting agreements and schedules, subject to:

- (a) Foothills (Yukon) amending its tariff in a form and content satisfactory to the Board in conformity with these Reasons for Decision;
- (b) Any further modifications that may be required by:
 - (i) matters related to prebuilding;
 - (ii) matters related to the composition of Alaska gas;
 - (iii) matters related to significant changes in tariffs in the United States arising from any amendment to F.E.R.C. Order No. 31.

- (iv) changes arising from the execution of contracts between producers and shippers and the execution of service agreements for the transportation of gas between Foothills (Yukon) and the shippers.
- (v) changes arising from the execution of service agreements for the transportation of gas between Foothills (Yukon) and its subsidiaries;
- (vi) changes arising from the execution of construction management agreements and operating agreements in a form already filed with the Board or as amended in a form satisfactory to the Board;
- (vii) modifications deemed necessary by the Board as a result of definitive financing plans; and
- (viii) matters not dealt with in these proceedings.

Paragraph 3 of Order No. TG-1-79 specifically provides for the approval of the form and content of the Foothills (Yukon) tariff in the form filed and dated April 1979, subject to the qualifications enumerated above.

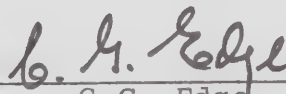
The Board approves for inclusion and amortization in the rate base of Foothills (Yukon) and its subsidiaries the amount of \$79,111,000, being the preliminary expenses up to 31 December 1978, subject to:


- (1) Foothills (Yukon) fulfilling to the satisfaction of the Board, the conditions set forth in the Reasons for Decision; and


- (2) The Board receiving the appropriate certificate from the Auditor General of Canada in relation to the expenses of the Northern Pipeline Agency and the National Energy Board.

The allocation of the cost of service charges associated with the preliminary expenditures to zones is to be in conformity with these Reasons for Decision. Paragraphs 4 and 5 of Order No. TG-1-79 specifically provide for the inclusion and amortization in the rate base of Foothills (Yukon) and its subsidiaries of the preliminary expenditures subject to the qualifications enumerated above, and for the method of allocation of the same.

The foregoing chapters, together with Order No. TG-1-79 and the Board's Decision on "The Method for Regulating the Tolls and Tariffs of the Foothills (Yukon) Pipeline", attached to and forming part of the said Order, which is shown as Appendix C hereto, set forth our Reasons for Decision and our Decision in this matter.


C.G. Edge,
Presiding Member


L.M. Thur,
Member


R.B. Horner,
Member

ORDER NO. RH-2-79

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder, and the Northern Pipeline Act; and

IN THE MATTER OF a public hearing respecting tariffs, tolls to be charged by Foothills Pipeline (Yukon) Ltd. (hereinafter referred to as Foothills), the financing of the pipeline, and other related matters. File No.: 1510-2-2.

B E F O R E the Board on Thursday, the 12th day of April, 1979.

WHEREAS pursuant to the National Energy Board Act, the tolls to be charged by Foothills must be just and reasonable,

AND WHEREAS pursuant to the Northern Pipeline Act, the Board may approve the form and content of a tariff filed at the time the financing of the pipeline is being considered,

AND WHEREAS Foothills has filed a submission on the form and content of the tariff for the pipeline dated 21 March 1979 and, at the request of the Board, additional information dated 21 March 1979,

AND WHEREAS Foothills has applied to have certain expenses incurred prior to 1 January 1979 included in its rate base,

AND WHEREAS the National Energy Board has issued a "Proposed Method for the Regulation of Tolls and Tariffs of the Foothills Pipeline", on 18 April 1979, and wishes to receive the views of Foothills and interested parties on this proposal,

- 2 -

AND WHEREAS the National Energy Board has issued a "Proposed Approach to Incentive Rate of Return for the Northern Pipeline" on 5 October 1978 and has received submissions on it and reissued its "Proposed Approach to Incentive Rate of Return for the Northern Pipeline" on 24 January 1979, and deems it desirable to hold a public hearing for the purpose of issuing regulations on the Incentive Rate of Return scheme,

AND WHEREAS Foothills has announced its intent to prebuild the southern segments of the pipeline, for which segments the form and content of the tariff and the tolls to be charged during the initial period may be different from those during the later period when Alaskan gas is flowing,

AND WHEREAS the financing of the pipeline including any prebuilt segments has not yet been established to the satisfaction of the Board pursuant to condition 12 of Schedule III of the Northern Pipeline Act,

IT IS ORDERED THAT

1. A public hearing shall be held in the Hearing Room of the National Energy Board, Trebla Building, 473 Albert Street, in the City of Ottawa, in the Province of Ontario, commencing on Tuesday the 12th day of June, 1979, at 9:30 a.m. local time, for the purpose of hearing evidence respecting tariffs and tolls to be charged by Foothills, the Incentive Rate of Return scheme,

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financing of the pipeline, and related matters. Such proceedings will be conducted in either of the two official languages, and simultaneous interpretation will be provided should a party to the proceedings request such facilities in his intervention.

2. Evidence and submissions shall be heard in three Phases:

PHASE I -

- (a) to enable the Board to determine whether the National Energy Board's Proposed Method for the Regulation of Tolls and Tariffs of the Foothills Pipeline, dated 18 April 1979, is an appropriate method for regulating Foothills' transportation tolls and charges; and
- (b) to enable the Board to determine whether the form and content of the Proposed Tariff, filed on 21 March 1979 by Foothills Pipe Lines (Yukon) Ltd., is an appropriate method to use in the determination of just and reasonable transportation tolls for the movement of gas through Zones 1 to 11 of the Canadian Segment of the Alaska Highway Gas Pipeline System;
- (c) to enable the Board, upon reading Foothills' application dated 12 April 1979, to determine whether certain preliminary expenditures made up to 31 December 1978, as recorded on the books of account of The Alberta Gas Trunk Line Company Limited, Westcoast Transmission Company Limited, Alberta Natural Gas Company Ltd., Foothills Pipe

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Lines Ltd. and Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies, up to that date, qualify for inclusion in the Rate Base of Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies for the Alaska Highway Gas Pipeline System in Canada;

PHASE II

- (d) to enable the Board to determine whether the form and content of the Proposed Tariff, to be filed by Foothills by 1 May 1979, is an appropriate method to use in the determination of just and reasonable tolls for the movement of Alberta gas through the proposed southern portion (the portion to be prebuilt) of the Alaska Highway Gas Pipeline System.

PHASE III -

- (e) to finalize the approach to Incentive Rate of Return for the Northern Pipeline; and
- (f) to establish to the satisfaction of the Board that financing has been obtained for the pipeline and for any prebuilt sections of the pipeline, pursuant to Condition 12 of Schedule III of the Northern Pipeline Act.

The date for the commencement of Phase II and Phase III will be announced later.

3. Foothills shall serve, as soon as possible, but not later than 15 May 1979, a true copy of the form and content of the

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tariff for the pipeline; the form and content of the tariff relating to prebuilt sections of the pipeline; the Board's Proposed Method for the Regulation of Tolls and Tariffs of the Foothills Pipeline, dated 18 April 1979; Foothills' application, dated 12 April 1979, which includes statements of preliminary expenditures on the Alaska Highway Gas Pipeline Project, as recorded on the books of account of the companies referred to in paragraph 2(a), together with a copy of the NEB audit report on these expenditures; the Board's Proposed Approach to Incentive Rate of Return for the Northern Pipeline, dated 24 January 1979; and a true copy of this Order upon all of its potential shippers and customers in Canada and the United States, upon the Attorneys-General of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Quebec, upon the Commissioner of the Yukon and the Commissioner of the Northwest Territories, and upon the United States Federal Energy Regulatory Commission, and, as soon as may be possible, upon those persons who have intervened pursuant to paragraph (5) hereof, and Foothills shall file proof of service thereof with the Board at the opening of the hearing.

4. Notice of the said hearing in the form prescribed by the Board, as set forth in the Notice attached to and forming part of this Order, shall be published on or before the 27th day of April, 1979, in one issue of each of "The Colonist" in the

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City of Victoria, in the Province of British Columbia; "The Herald" in the City of Calgary and "The Journal" in the City of Edmonton, both in the Province of Alberta; "The Leader-Post" in the City of Regina, in the Province of Saskatchewan; "The Free Press" in the City of Winnipeg, in the Province of Manitoba; "The Globe and Mail" and "The Financial Post" in the City of Toronto, and "The Citizen" and "Le Droit" in the City of Ottawa, all in the Province of Ontario; "The Gazette", "Le Devoir", and "Financial Times of Canada" in the City of Montreal, in the Province of Quebec; and as soon as may be possible in the Canada Gazette.

5. Any respondent or intervenor intending to oppose or intervene in the said hearing shall, on or before the 1st day of June 1979, file with the Secretary of the Board thirty (30) copies of a written statement, in either of the two official languages, containing his reply or submission, together with any supporting information, particulars or documents, which shall include a concise statement of the facts from which the nature of the respondent's or intervenor's interest in the proceedings may be determined, which may admit or deny any or all of the facts alleged in the submission and/or additional information filed by Foothills, and which shall be endorsed with the name and address of the respondent or intervenor or his solicitor to whom

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communications may be sent. Any respondent or intervenor shall, on or before the 1st day of June, 1979, serve three (3) copies of his reply or submission and supporting information, particulars or documents upon Foothills and one (1) copy each upon the Attorneys-General of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec, the Commissioner of the Yukon Territory, the Commissioner of the Northwest Territories, and the United States Federal Energy Regulatory Commission.

6. In order to make potential interested parties in the United States aware of the proceedings, the National Energy Board has served copies of the notice of this hearing on all parties of record in the United States Federal Regulatory Commission Docket CP 78-123 et al, a proceeding on the United States portion of the Alaska Highway Gas Pipeline Project.

7. The National Energy Board Rules of Practice and Procedure shall apply mutatis mutandis to the proceedings.

8. Any interested party may examine a copy of the submission and additional information filed by Foothills as well as the Board's documents referred to in this Order at the office of:

National Energy Board,
Trebla Building,
473 Albert Street,
Ottawa, Ontario
K1A 0E5

or at the following addresses:

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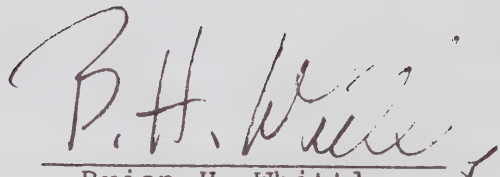
- 8 -

Foothills Pipe Lines (Yukon) Ltd.,
1600 Bow Valley Square II,
205 - Fifth Avenue S.W.,
Calgary, Alberta
T2P 2W4

Alaska Gas Project Office,
Federal Energy Regulatory Commission,
941 North Capitol Street, N.E.,
Room 3004,
Washington, D.C.
20426

DATED at the City of Ottawa, in the Province of Ontario,
this 12th day of April, 1979.

NATIONAL ENERGY BOARD



Brian H. Whittle,
Secretary

NATIONAL ENERGY BOARD
NOTICE OF HEARING
IN THE MATTER OF TOLLS, TARIFFS AND FINANCING OF
FOOTHILLS PIPE LINES (YUKON) LTD.

WHEREAS pursuant to the National Energy Board Act, the tolls to be charged by Foothills must be just and reasonable,

AND WHEREAS pursuant to the Northern Pipeline Act, the Board may approve the form and content of a tariff filed at the time the financing of the pipeline is being considered,

AND WHEREAS Foothills has filed a submission on the form and content of the tariff for the pipeline dated 21 March 1979 and, at the request of the Board, additional information dated 21 March 1979,

AND WHEREAS Foothills has applied to have certain expenses incurred prior to 1 January 1979 included in its rate base;

AND WHEREAS the National Energy Board has issued a "Proposed Method for the Regulation of Tolls and Tariffs of the Foothills Pipeline", on 18 April 1979, and wishes to receive the views of Foothills and interested parties on this proposal,

AND WHEREAS the National Energy Board has issued a "Proposed Approach to Incentive Rate of Return for the Northern Pipeline" on 5 October 1978 and has received submissions on it and reissued its "Proposed Approach to Incentive Rate of Return for the Northern Pipeline" on 24 January 1979, and deems it desirable to hold a public hearing for the purpose of issuing regulations on the Incentive Rate of Return scheme,

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- 2 -

AND WHEREAS Foothills has announced its intent to prebuild the southern segments of the pipeline, for which segments the form and content of the tariff and the tolls to be charged during the initial period may be different from those during the later period when Alaskan gas is flowing,

AND WHEREAS the financing of the pipeline including any prebuilt segments has not yet been established to the satisfaction of the Board pursuant to condition 12 of Schedule III of the Northern Pipeline Act,

TAKE NOTICE that the Board has ordered that a public hearing shall be held commencing on Tuesday, the 12th day of June, 1979, at 9:30 a.m. in the Hearing Room of the National Energy Board, Trebla Building, 473 Albert Street, in the City of Ottawa, in the Province of Ontario for the purpose of hearing evidence respecting tariffs and tolls charged by Foothills, the Incentive Rate of Return scheme, financing, and other related matters. Such proceeding will be conducted in either of the two official languages and simultaneous interpretation will be provided should a party to the proceedings request such facilities in his intervention.

AND THE BOARD HAS FURTHER ORDERED THAT:

1. Evidence and submissions shall be heard in three phases:

.../3

- 3 -

PHASE I -

- (a) to enable the Board to determine whether the National Energy Board's Proposed Method for the Regulation of Tolls and Tariffs of the Foothills Pipeline dated 18 April 1979 is an appropriate regulatory method for regulating Foothills' transportation tolls and charges; and
- (b) to enable the Board to determine whether the form and content of the Proposed Tariff for the pipeline, filed on 21 March 1979 by Foothills Pipe Lines (Yukon) Ltd., is an appropriate method to use in the determination of just and reasonable transportation tolls for the movement of gas through Zones 1 to 11 of the Canadian Segment of the Alaska Highway Gas Pipeline System;
- (c) to enable the Board, upon reading Foothills application dated 12 April 1979, to determine whether certain preliminary expenditures made up to 31 December 1978, as recorded in the books of account of The Alberta Gas Trunk Line Company Limited, Westcoast Transmission Company Limited, Alberta Natural Gas Company Ltd., Foothills Pipe Lines Ltd. and Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies, up to that date, qualify for inclusion in the Rate Base of Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies for the Alaska Highway Gas Pipeline System in Canada;

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PHASE II -

- (d) to enable the Board to determine whether the form and content of the Proposed Tariff, to be filed by Foothills by 1 May 1979 is an appropriate method to use in the determination of just and reasonable tolls for the movement of Alberta gas through the proposed southern portion (the portion to be prebuilt) of the Alaska Highway Gas Pipeline System;

PHASE III -

- (e) to finalize the approach to Incentive Rate of Return for the Northern Pipeline; and
- (f) to establish to the satisfaction of the Board that financing has been obtained for the pipeline and for any prebuilt sections of the pipeline, pursuant to Condition 12 of Schedule III of the Northern Pipeline Act.

The date for the commencement of Phase II and Phase III will be announced later.

2. Any respondent or intervenor intending to oppose or intervene in the said hearing shall on or before the 1st day of June, 1979, file with the Secretary of the Board thirty (30) copies of a written statement, in either of the two official languages, containing his reply or submission together with any supporting information, particulars or documents, which shall include a concise statement of the facts from which the nature of

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the respondent's or intervenor's interest in the proceedings may be determined, which may admit or deny any or all of the facts alleged in the submission and/or additional information filed by Foothills and which shall be endorsed with the name and address of the respondent or intervenor or his solicitor to whom communications may be sent. Any respondent or intervenor shall, on or before the 1st day of June 1979, serve three (3) copies of his reply or submission and supporting information, particulars or documents upon Foothills and one (1) copy upon each of the Attorneys-General of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Quebec, upon the Commissioner of the Yukon Territory and the Commissioner of the Northwest Territories, and upon the United States Federal Energy Regulatory Commission,

3. In order to make potential interested parties in the United States aware of the proceedings, the National Energy Board has served copies of the notice of this hearing on all parties of record in the United States Federal Regulatory Commission Docket CP 78-123 et al, a proceeding on the United States portion of the Alaska Highway Gas Pipeline Project.

4. The National Energy Board Rules of Practice and Procedure shall apply mutatis mutandis to the proceedings.

5. Any interested party may examine copies of
(a) the submission and additional information filed by Foothills on the form and content of the tariff.

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- (b) Foothills' application, dated 12 April 1979 and the Board's audit report on the preliminary expenditures as recorded in the books of account of The Alberta Gas Trunk Line Company Limited, Westcoast Transmission Company Limited, Alberta Natural Gas Company Ltd., Foothills Pipe Lines Ltd., and Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies, up to 31 December 1978, which may qualify for inclusion in the Rate Base of Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies on the Alaska Highway Gas Pipeline System;
- (c) the National Energy Board's proposals concerning the regulation of tolls and tariffs, the incentive rate of return scheme, and submissions received, at the office of

National Energy Board,
Trebla Building,
473 Albert Street,
Ottawa, Ontario
K1A 0E5

or at the following addresses:

Foothills Pipe Lines (Yukon) Ltd.,
1600 Bow Valley Square II,
205 - Fifth Avenue S.W.,
Calgary, Alberta
T2P 2W4

Alaska Gas Project Office,
Federal Energy Regulatory Commission,
941 North Capitol Street, N.E.,
Room 3004,
Washington, D.C.
20426

DATED at the City of Ottawa, in the Province of
Ontario, this 12th day of April, 1979.

NATIONAL ENERGY BOARD

Brian H. Whittle
Secretary

ORDER NO. AO-1-RH-2-79

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder, and the Northern Pipeline Act; and

IN THE MATTER OF a public hearing respecting tariffs, tolls to be charged by Foothills Pipe Lines (Yukon) Ltd. (hereinafter referred to as Foothills), the financing of the pipeline, and other related matters. File No. 1510-2-2.

B E F O R E the Board on Monday, the 7th day of May, 1979.

WHEREAS, by Order No. RH-2-79, the National Energy Board has set down for hearing in the City of Ottawa, commencing on Tuesday, 12 June 1979, evidence respecting tariffs and tolls to be charged by Foothills, financing of the pipeline and related matters;

AND WHEREAS it appears expedient to require Foothills to serve certain additional information to that ordered in paragraph 3 of Order No. RH-2-79;

IT IS ORDERED THAT paragraph 3 of Order No. RH-2-79, dated 12 April 1979, be revoked and the following substituted therefor:

- "3. Foothills shall serve, as soon as possible, but not later than 15 May 1979, true copies of the form and content of the tariff for the pipeline, dated 21 March 1979 and April,

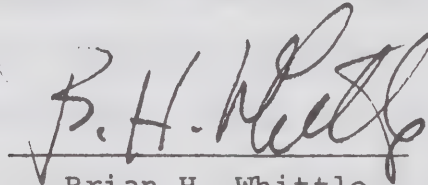
1979, a copy of the proposed Construction Management Agreement between Foothills Pipe Lines (North B.C.) Ltd. and Westcoast Transmission Company Limited; the form and content of the tariff relating to prebuilt sections of the pipeline; the Board's Proposed Method for the Regulation of Tolls and Tariffs of the Foothills Pipeline, dated 18 April 1979; Foothills' application, dated 12 April 1979, which includes statements of preliminary expenditures on the Alaska Highway Gas Pipeline Project, as recorded on the books of account of the companies referred to in paragraph 2(a), together with a copy of the NEB audit report on these expenditures; the Board's Proposed Approach to Incentive Rate of Return for the Northern Pipeline, dated 24 January 1979; and a true copy of this Order upon all of its potential shippers and customers in Canada and the United States, upon the Attorneys-General of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec, upon the Commissioner of the Yukon Territories and the Commissioner of the Northwest Territories, and upon the United States

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Federal Energy Regulatory Commission and, as soon as may be possible, upon those persons who have intervened pursuant to paragraph (5) hereof, and Foothills shall file proof of service thereof with the Board at the opening of the hearing."

Dated at the City of Ottawa, in the Province of Ontario, this 7th day of May, 1979.

NATIONAL ENERGY BOARD

A handwritten signature in dark ink, appearing to read "B. H. Whittle", is written over a horizontal line.

Brian H. Whittle
Secretary

ORDER NO. AO-2-RH-2-79

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder, and the Northern Pipeline Act; and

IN THE MATTER OF a public hearing respecting tariffs, tolls to be charged by Foothills Pipe Lines (Yukon) Ltd. (hereinafter referred to as Foothills), the financing of the pipeline, and other related matters.
File No.: 1510-2-2

B E F O R E the Board on Wednesday, the 4th day of July, 1979.

WHEREAS, by Order No. RH-2-79, dated the 12th day of April, 1979, a public hearing was commenced at 9:30 a.m., on Tuesday, the 12th day of June, 1979, for the purpose of hearing evidence respecting tariffs and tolls to be charged by Foothills, the financing of the pipeline and related matters, which hearing was to be held in three phases;

AND WHEREAS it appears expedient to divide Phase III of the said hearing into two separate phases;

IT IS ORDERED THAT paragraphs (e) and (f) under the heading "Phase III" on page 4 of the said Order No. RH-2-79 be revoked and the following substituted therefor:

"Phase III -

- (e) to finalize the approach to the Incentive Rate of Return for the Northern Pipeline, such evidence and submissions in this Phase being confined to:

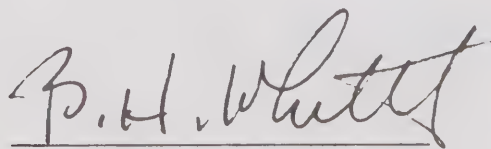
- (i) modifications that may be needed to the "Proposed Approach to Incentive Rate of Return for the Northern Pipeline", issued by the Board on 24 January 1979, arising from (ii), (iii), and (iv) below;
- (ii) matters related to the Federal Energy Regulatory Commission's Order No. 31 issued 8 June 1979, and any amendments thereto;
- (iii) matters referred to in the Reasons for Decision in Phases I and II of these proceedings; and
- (iv) the effect of any significant change to the financing plan from that placed in evidence during the Board's Northern Pipeline Hearing.

Phase IV -

- (f) to establish to the satisfaction of the Board that financing has been obtained for the pipeline and for any prebuilt sections of the pipeline, pursuant to condition 12 of Schedule III of the Northern Pipeline Act."

DATED at the City of Ottawa, in the Province of Ontario,
this 4th day of July, 1979.

NATIONAL ENERGY BOARD


Brian H. Whittle,
Secretary

THE NATIONAL ENERGY BOARD'S
PROPOSED METHOD
FOR THE REGULATION OF TOLLS AND TARIFFS OF THE
FOOTHILLS PIPELINE

The Foothills pipeline to which this document refers is the pipeline defined as follows in Section 2 of the Northern Pipeline Act:

"... the pipeline for the transportation of natural gas from Alaska across Canada along the route set out in Annex 1 to the Agreement..."

In response to a request by the Board on 1 February 1979, Foothills Pipe Lines (Yukon) Ltd. filed the form and content of its proposed tolls and tariffs for the pipeline on 21 March 1979. The filing contained "the form and content" of the tariff, but did not include details of the actual costs that would be charged.

The tariff filed is a "cost of service" form of tariff. This may be described as follows:

Under a cost of service form of tariff, the regulatory agency allows the utility to adjust its charges in accordance with rules approved by the agency on a monthly basis as costs incurred change. The rules specify the costs that can be recovered under the tariff, the accounting principles to be followed in determining the schedule of tolls, the rates of return allowed on the investment, the depreciation rates, and the other parameters necessary for determining the cost of service.

This is in contrast to a "fixed toll" form of tariff, which is described as follows:

Under a "fixed toll" form of tariff, a regulatory agency allows the utility to charge a schedule of tolls based on the estimated cost of service. The toll is generally in two parts: a monthly demand charge based on the apportioned capacity of the pipeline equivalent to the maximum daily contracted shipment entitlement, and a commodity charge (per Mcf) related to the actual amount shipped. This schedule of tolls remains unchanged until a new rate proceeding is conducted by the regulatory agency, and until the agency allows the schedule to be altered.

It has generally been accepted that a cost of service form of tariff would be a prerequisite for obtaining private sector financing for the pipeline in the United States and in Canada. In respect of the United States, this view is expressed in the second paragraph on page 4 of the Report of the Alaskan Delegate (attached). In Canada, this was the form of tariff discussed in the National Energy Board's Northern Pipeline Hearings; at that time it was considered appropriate by the Board.

The tolls and tariff for the Foothills pipeline are governed by Part IV of the NEB Act and Part II of the Northern Pipeline Act. In particular, Section 35 of the Northern Pipeline Act reads as follows:

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"35. Where a company files a tariff at the time the financing of the pipeline is being considered, the Board may approve the form and content of the tariff and the rate of return on the equity investment of the company".

In the Board's view, United States federal and state regulatory authorities and the investment community will require details not only of the form and content of the Foothills tariff, but also of the Board's proposed method for the regulation of the transportation charges under the conditions specified in the approved tariff. This is because the investment community, before committing funds for the financing of the project, will require assurance that transportation charges approved in Canada can be flowed through ("tracked") to the ultimate consumer in the United States without additional approval from United States federal and state regulatory agencies over and above any general authority for "tracking".

In view of the foregoing and as Foothills has filed a cost of service form of tariff, the Board is issuing this preliminary proposal on its method for regulating the tariff in order to permit interested parties to make their views known to the Board during a tariff proceeding, now scheduled to commence on 12 June 1979.

On both the tariff and the method of regulation, the Board is consulting with the Federal Energy Commission as provided for in Section 9 of the Canada/United States Agreement and Section 32 of the Northern Pipeline Act to achieve a reasonably uniform approach on

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these matters for the pipeline as a whole, since the pipeline in the United States and Canada will undoubtedly be considered as a single entity by the investment community.

The purposes of the Board's preliminary regulatory proposal are:

1. to enable the Board to determine prospectively the methods and parameters for computation of the tolls and tariffs for the pipeline, and the means of applying these, which will result in transportation charges that are just and reasonable;
2. to provide visibility for a form of regulation in Canada that will encourage the acceptance, by United States federal and state regulatory agencies, of the principle of tracking transportation charges incurred in Canada; and
3. to provide for a form of tariff conducive to private sector financing of the pipeline.

To achieve these purposes, the method of regulation must recognize the special circumstances of the Foothills pipeline, and should be the least burdensome form of regulation consistent with the purposes to be achieved.

On the surface, it might appear that a cost of service tariff in which a pipeline company's costs are recovered directly from revenues received from shippers would enable the pipeline

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company to include its actual costs in its tariff without these costs being subject to regulatory review. However, major areas of cost will be governed by previous decisions of the Board, arrived at through the public hearing process, which establish the parameters determining the actual dollar cost in a given period. For example, the depreciation charged in a given year would be derived by applying the rate previously approved by the Board to the cost of assets for projects certificated by the Board. The cost of these assets would subsequently be incorporated in a rate base authorized by the Board.

In any given year there would be costs, such as operations and maintenance, that would be largely within the direct control of company management; a proposal for the treatment of this type of cost is outlined in this document.

The proposed approach is as follows:

1. Audits would be conducted by the Board
 - (a) on construction costs during and on completion of the construction period, and
 - (b) on cost of service, annually during the operation of the pipeline.
2. Audit reports would be public documents available for examination by interested parties.
3. Items for inclusion in the initial rate base and cost of service would be subject to testing for prudence by interested parties in public hearings, recognizing, however, that

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- (a) certain purchase contracts or classes of contracts would, pursuant to paragraph 10, Schedule III of the Northern Pipeline Act, be specified by the Minister as requiring approval of the Designated Officer prior to execution and would, therefore, have already received regulatory approval, and
- (b) charges for monitoring costs by the Northern Pipeline Agency and the Board would have been audited and certified by the Auditor General of Canada and would, therefore, have already been approved by the Government of Canada.

4. Parameters used for the determination of costs to be included in the cost of service, e.g., depreciation rates, allowable return on equity, etc., would be subject to evaluation in public hearings before being approved by the Board. This would take place before operations commenced. They would remain unaltered unless revisions were warranted by changed circumstances, and then only if these were determined by the Board to be significant. Changes would only be made after shippers and interested parties had an opportunity to make representations regarding appropriate procedures for evaluation of proposed changes.
5. Subsequent additions to rate base would be subject to the requirements of Part III of the National Energy Board Act. (Major additions to rate base would automatically require public hearings in respect of applications for certificates of

public convenience and necessity under Part III of the NEB Act. Smaller projects also require prior approval of the Board.)

6. Certain types of costs that are beyond the control of the pipeline company could be flowed through automatically if previously approved through the public hearing process. Examples of such costs are exchange gains and losses on financing costs.
7. For operating and maintenance costs and any other costs where management has a certain discretion, the following principles would apply:
 - (a) Foothills would submit annually to the shippers, to other interested parties, and to the Board its estimate of these costs by principal expense component for the ensuing year. Shippers and other interested parties, following discussions with Foothills, could if necessary make representation to the Board requesting changes in the estimates.
 - (b) The Board, after reviewing the estimates and considering any representations, and having ordered any revisions found necessary, would approve an estimate of these costs to be incorporated in the transportation charges.
 - (c) Overruns and underruns in revenues from the approved estimate would be deferred. At the end of the year, any extra revenues collected would be eliminated by a reduction in the transportation charges in the next appropriate month. The Board would consider

any representations by shippers, by any other interested parties and by Foothills on the reasons for overruns in costs relative to revenues generated, and would then direct the disposition of them. Month-end balances in deferred accounts would include a carrying charge of, say, prime rate plus one per cent.

8. Foothills would be required to give advance notice to shippers, to other interested parties, and to the Board, of any large costs expected to be incurred, if they are of an unusual nature or are not covered by previous rulings or decisions of the Board. Collection of such costs would be deferred pending their disposition by the Board.
9. Because of the essential nature of a cost of service form of tariff, i.e., the recovery of costs as they are incurred, the Board believes that Foothills would have an onus to demonstrate from time to time to shippers, to any other interested parties, and to the Board that it is operating in an efficient and effective way. Although such demonstration would not be an integral part of the tariff, the Board would require Foothills to make such showing.
10. The significant features of the approved regulatory scheme would be incorporated in regulations.

Since no tariff relating to prebuilt facilities has yet been filed, this document excludes any special considerations that might be needed if prebuilding should occur.

NATIONAL ENERGY BOARD



OFFICE NATIONAL DE L'ÉNERGIE

ORDER NO. TG-1-79

IN THE MATTER OF the National Energy Board Act
and the Regulations made thereunder, and the
Northern Pipeline Act; and

IN THE MATTER OF a public hearing respecting
tariffs and tolls to be charged by Foothills
Pipe Lines (Yukon) Ltd. (hereinafter referred
to as "Foothills (Yukon)", the financing of
the pipeline, and other related matters.
File No.: 1510-2-2.

B E F O R E:

| | | |
|-------------------------|---|----------------------------|
| C.G. Edge, |) | |
| Vice-Chairman |) | |
| |) | on Wednesday, the 18th day |
| L.M. Thur, |) | of July, 1979. |
| Associate Vice-Chairman |) | |
| |) | |
| R.B. Horner, |) | |
| Member |) | |

WHEREAS by Order No. RH-2-79 the National Energy Board
("the Board") ordered that a public hearing be held in Ottawa
to hear evidence and submissions on the tariffs and tolls to be
charged by Foothills (Yukon), the financing of the Foothills
(Yukon) natural gas pipeline, and other related matters;

AND WHEREAS the Board decided to hear evidence and
submissions on these matters in phases;

AND WHEREAS the specific matters that were the subject
of Phase I of the hearing were the examination of the National
Energy Board's Proposed Method for the Regulation of tolls and
tariffs of the Foothills (Yukon) pipeline, the form and content
of the tariff for the pipeline, excluding provision of prebuilt

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facilities, and the question of inclusion of preliminary expenditures incurred up to 31 December 1978 in the rate base of Foothills (Yukon) and its subsidiary companies;

AND WHEREAS Foothills (Yukon), with respect to the matters being dealt with in Phase I of the hearing, specifically applied to the Board on 30 April 1979 for the following: (a) an order pursuant to subsection 31(2) of the Northern Pipeline Act that a single tariff in the form filed and dated April 1979 be established in Canada with respect to all Canadian Segments of the Alaska Highway Gas Pipeline System; (b) an order approving, pursuant to section 35 of the Northern Pipeline Act, the tariff in the form filed and dated April 1979, including the form of tariff for the subsidiaries of Foothills (Yukon) together with their supporting agreements and schedules; and (c) an order approving for inclusion and amortization in the rate base of Foothills (Yukon) and its subsidiary companies the preliminary expenditures incurred up to 31 December 1978 as recorded on the books of account of the Alberta Gas Trunk Line Company Limited, Westcoast Transmission Company Limited, Alberta Natural Gas Company Ltd., Foothills Pipe Lines Ltd., and Foothills Pipe Lines (Yukon) Ltd. and its subsidiary companies (as set forth in the application).

AND THE BOARD having heard and considered the evidence and submissions relating to Phase I of the hearing;

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IT IS DECLARED THAT:

1. Under Sections 11 and 50 of the National Energy Board Act, the Board's method for regulating the tolls and tariffs of the Foothills (Yukon) pipeline shall be as set forth in the Appendix attached to and forming part of this Order.

AND IT IS ORDERED THAT:

2. Pursuant to subsection 31(2) of the Northern Pipeline Act, a single tariff shall be established in Canada for all Canadian segments of the Foothills (Yukon) pipeline, and Foothills (Yukon) shall file such tariff at a date to be specified by the Board, in the form filed and dated April 1979, as amended by or qualified in the Board's Reasons for Decision in the Matter of Phase I of the Public Hearing Respecting Tariffs and Tolls to be charged by Foothills (Yukon), the financing of the pipeline, and other related matters, dated July 1979 (the Board's "Reasons for Decision").

3. Pursuant to section 35 of the Northern Pipeline Act, the form and content of Foothills (Yukon) tariff in the form filed and dated April 1979, including the form and content of the tariff for the subsidiaries of Foothills (Yukon), together with their respective supporting agreements and schedules, be and the same are hereby approved, subject to:

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- (a) Foothills (Yukon) amending its tariff in a form and content satisfactory to the Board in conformity with the Board's Reasons for Decision; and
- (b) Any further modifications that may be required by:
 - (i) matters related to prebuilding;
 - (ii) matters related to the composition of Alaska gas;
 - (iii) changes in tariffs in the United States arising from any amendment to the Federal Energy Regulatory Commission Order No. 31 issued on 8 June 1979 where such changes are deemed to be significant by the Board;
 - (iv) changes arising from the execution of contracts between producers and shippers and the execution of service agreements for the transportation of gas between Foothills (Yukon) and the shippers;
 - (v) changes arising from the execution of service agreements for the transportation of gas between Foothills (Yukon) and its subsidiaries;
 - (vi) changes arising from the execution of construction management agreements and operating agreements in a form already filed with the Board or as amended in a form satisfactory to the Board;

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- (vii) modifications deemed necessary by the Board as a result of definitive financing plans; and
- (viii) matters not dealt with in these proceedings,

4. Under Part IV of the National Energy Board Act, the inclusion and amortization in the rate base of Foothills (Yukon) and its subsidiaries of the amount of \$79,111,000, being the preliminary expenses up to 31 December 1978, be and the same is hereby approved, subject to:

- (1) Foothills (Yukon) fulfilling to the satisfaction of the Board, the conditions set forth in the Board's Reasons for Decision; and
- (2) the Board receiving the appropriate certificate from the Auditor General of Canada in relation to the expenses of the Northern Pipeline Agency and the National Energy Board.

5. Pursuant to Part IV of the National Energy Board Act, the cost of service charges associated with the preliminary expenditures incorporated in the rate base, as referred to in paragraph 4 hereof, shall be allocated to zones in conformity with the Board's Reasons for Decision.

NATIONAL ENERGY BOARD



for Brian H. Whittle,
Secretary

THE NATIONAL ENERGY BOARD'S METHOD
FOR REGULATING THE TOLLS AND TARIFFS
OF THE FOOTHILLS (YUKON) PIPELINE

This document sets forth the Board's Decision on its approach to the regulation of the Foothills (Yukon) pipeline. The Foothills (Yukon) pipeline to which this document refers is the pipeline defined as follows in Section 2 of the Northern Pipeline Act:

"... the pipeline for the transportation of natural gas from Alaska across Canada along the route set out in Annex 1 to the Agreement..."

The objectives of the Board's approach to the regulation of the pipeline are:

1. To enable the Board to determine, before costs are incurred, the methods and parameters for computations of the tolls and tariffs for the pipeline and, for certain categories of cost, to approve estimates of costs for inclusion in the cost of service until more is known about actual costs. (The Board requires, as a matter of principle, prospective control of most costs to enable it to determine that tolls and tariffs are just and reasonable);

- 2 -

2. To provide substance to a form of regulation in Canada that will encourage the acceptance, by United States federal and state regulatory agencies, of the tracking of just and reasonable transportation charges incurred in Canada; and
3. To provide for a form of tariff conducive to private sector financing of the pipeline.

To achieve these objectives, the method of regulation recognizes the special circumstances of the Foothills (Yukon) pipeline, and aims at the least burdensome form of regulation consistent with the objective to be achieved.

The approach to be used is as follows:

Audit

1. Audits will be conducted by the Board
 - (a) on construction costs during and upon completion of construction, and
 - (b) on cost of service, annually during the operation of the pipeline.
2. Audit reports will be public documents available for examination by interested parties.

Interested Parties

3. Representative consumer-interest groups may, upon application, be granted interested party status in all matters related to tolls and tariffs subsequent to the hearing called by the Board's Order No. RH-2-79. Any shipper will automatically be considered an interested party.

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Rate Base

4. Public hearings to deal expeditiously with applications for inclusion of construction costs in rate base will be held at least once a year.
5. Certain purchase contracts or classes of contracts will, pursuant to paragraph 10, Schedule III of the Northern Pipeline Act, be specified by the Minister responsible for the Northern Pipeline as requiring approval by the Designated Officer of the Northern Pipeline Agency prior to execution. Such contracts will therefore, have received regulatory approval before being considered by, the Board. If the audit report on the administration of the contract raises no issues that in the Board's view warrant a public hearing, the costs incurred under the contracts will be automatically approved by the Board for inclusion in the rate base.
6. Charges for monitoring costs by the Northern Pipeline Agency and the National Energy Board, after being audited and certified by the Auditor General, will be automatically included in the rate base.
7. All other costs being considered for inclusion in the rate base may be tested by the public hearing process.

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8. If, at the time the pipeline is due to commence operations, all actual costs have not been determined, the Board will permit estimates to be used provided the Board has approved the estimates in advance.
9. Foothills (Yukon) can include in its rate base any additions to rate base previously approved by the Board under Part III of the National Energy Board Act.

Cost of Service

10. Where shippers and other interested parties have the right to review certain costs or have complaints, they will be dealt with by expedited proceedings unless otherwise ordered by the Board. Expedited proceedings may be limited to the right to make written submissions.
11. The following represent costs that the Board is prepared to flow through into the cost of service automatically, provided the principles or methods of computation have been previously approved, or where the costs are largely outside the control of the company:

- . operations and maintenance costs -
 - up to the annual budget previously approved by the Board (special procedures will apply during the first year of operation);
- . municipal taxes (in the absence of unusual circumstances);

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- . depreciation;
- . amortization;
- . income taxes (on basis to be approved by the Board);
- . actual interest expenses in conformity with the tariff;
- . gains and losses on foreign exchange transactions;
- . return on equity; and
- . all charges related to the one-time adjustment to rate base for the Incentive Rate of Return Scheme.

12. The following represent costs for which shippers and interested parties will have the right of review and which require the approval of the Board:

- . annual budget of operating and maintenance costs;
- . disposition of deferred costs arising from overruns of operating and maintenance costs;
- . changes in the bases of allocation of costs from sponsors, including those arising from the operating agreement.

13. An application to change the basis of the principles or methods of determining costs in Item 11 will require a public hearing.

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14. Notwithstanding any of the foregoing, Foothills (Yukon) may automatically include in the cost of service any unusual costs resulting from emergency actions, e.g., repairing a line break. The Board should be notified immediately of such costs and will rule whether the revenue recovered from these costs should be recorded as revenue or deferred pending an investigation by the Board.
15. In respect of any major unusual costs not provided for above, Foothills (Yukon) is required to seek a prior ruling of the Board whether such costs can be automatically included in the cost of service or should be deferred. Such rulings will be given expeditiously.
16. Apart from matters identified in 13 above, the Board intends to use expedited proceedings, probably based on written submissions, for all matters related to the cost of service toll and tariff, in the operating phase of the pipeline, unless, in the Board's opinion, a public hearing is warranted.
17. Foothills (Yukon) will be required to provide information to the Board and interested parties from time to time on the efficiency and effectiveness of its operations. The Board will determine the frequency of such reports. The form and content thereof will require the approval of the Board.

